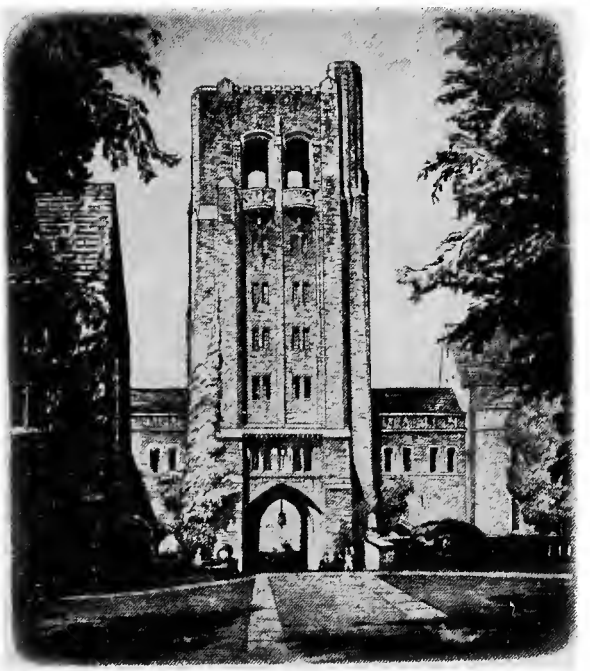

THE

Election and Naturalization

LAWS

OF THE

UNITED STATES.

BEING A COMPILATION OF

ALL CONSTITUTIONAL PROVISIONS AND LAWS OF THE UNITED STATES, RELATING TO ELECTIONS, THE ELECTIVE FRANCHISE, TO CITIZENSHIP, AND TO THE NATURALIZATION OF ALIENS.

WITH NOTES OF DECISIONS.

BY

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CINCINNATI:

ROBERT CLARKE & CO.,

1880.

PREFACE.

In view of the importance of the constitutional and statutory provisions of the United States relating to elections, to the naturalization of aliens, and other kindred subjects, and of the decisions of the United States courts relating thereto, and also in view of the fact that these provisions are to be found only in widely separated parts of large and expensive volumes of statutes, and that these decisions are scattered through series of reports, law magazines, and other periodicals, to all of which few persons out of reach of large public libraries can have access, it was thought the compilation found in this volume would be useful throughout the entire country, not only to officers of elections and other elective officers, but also to members of the bar, to candidates for office, to executive and campaign committees of all political parties, and to such other persons as take a proper interest in public affairs.

The plan as to decisions has been to give notes of all the decisions of the United States Supreme, Circuit, and District Courts; as to naturalization, notes of all the decisions of these courts and of all the State courts also.

Each paragraph, except those of the first chapter, is a section of the Revised Statutes of the United States, whose number is given in brackets at the beginning of the paragraph.

F. G.

CINCINNATI, OHIO, *February*, 1880.

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U. S. ELECTION AND NATURALIZATION LAWS.

CHAPTER I.

CONSTITUTIONAL PROVISIONS.

[From the Constitution of the United States.]

1. The House of Representatives shall be composed of members chosen every second year, by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. [Art. I, § 2, par. 1.]

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. [Ib., par. 2.]

3. . . . The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall, by law, direct. The number of representatives shall not exceed one for every thirty thousand; but each State shall have at least one representative.[1] . . . [Ib., par. 3.]

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill up such vacancies. [Ib., par. 4.]

5. The Senate of the United States shall be composed of two senators from each State, chosen by the legislature thereof, for six years; and each senator shall have one vote. [Ib., § 3, par. 1.]

6. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every

[1] The rule of apportionment prescribed in the first (the omitted) part of this paragraph has been changed by the fourteenth amendment. *Infra*, par. 20, chap. 1.

second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies. [Ib., par. 2.]

7. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen. [Ib., par. 3.]

8. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may, at any time, make or alter such regulations, except as to the place of choosing senators. [Ib., § 4, par. 1.]

9. Each house shall be the judge of the elections, returns, and qualifications of its own members.[1] [Ib, § 5, par.]

10. . . . No person holding any office under the United States shall be a member of either house during his continuance in office. [Ib., § 6, par. 2.]

11. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected, as follows: [Art. II., § 1, par. 1.]

12. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.[2] [Ib., par. 2.]

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[1] In a proper case the Supreme Court of Wisconsin will require the board of State canvassers to determine in accordance with law which one of the candidates at an election in that State for the office of representative in Congress is entitled to the certificate of election. This does not contravene the constitutional power of the House to determine its members' right to the office; the court merely deciding whether the return made to such board of votes cast in a county should be included in their canvass and statement. State *v.* Board of State Canvassers, 36 Wis. 498.

[2] A member of the Centennial Commission holds an office of trust, under the United States, within the meaning of Article II., section 1 of the Constitution, which makes him ineligible as a presidential elector. In re Corliss (Supreme Court of Rhode Island), 16 Am. Law Reg. 15.

Ineligibility, by reason of holding such office at the time of the election, can not be removed by a subsequent resignation of the office. Ib.

The effect of such ineligibility of the person receiving the highest number

13. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.[1] [Ib., par. 3.]

14. No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. [Ib., par. 4.]

15. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.[2] [Ib., par. 5.]

16. The electors shall meet in their respective States, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the Senate; the president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the vote shall then be counted; the person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as president, the House of Representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a

of votes is to avoid the election. It does not elect the person having the next highest number of votes. Ib.

[1] See ch. 8.

[2] See ch. 8.

choice. And if the House of Representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of death or other constitutional disability of the president. [Twelfth Amendment.]

17. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the vice-president; a quorum for this purpose, shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. [Ib.]

18. But no person constitutionally ineligible to the office of president shall be eligible to that of Vice-President of the United States. [Ib.]

19. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. [Fourteenth Amendment, § 1.]

20. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. [Ib. § 2.]

21. No person shall be a senator or representative in Congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legis-

lature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of the vote of each House, remove such disability. [Ib. § 3.]

22. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.[1] [Ib. § 5.]

23. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. [Fifteenth Amendment, § 1.]

24. Congress shall have power to enforce this article by appropriate legislation.[2] [Ib. § 2.]

25. Congress shall have power to establish a uniform rule of naturalization . . . throughout the United States.[3] [Art. I, § 8, par. 4.]

[1] For legislation under this amendment, see chaps. 2, 3, 4; for decisions, see notes to such chapters.

[2] See chaps. 2, 3, 4, and notes, for legislation and decisions under this amendment.

[3] See chaps. 6, 7, and notes, for legislation and decisions.

CHAPTER II.

THE ELECTIVE FRANCHISE — INCLUDING THE U. S. SUPERVISORS' LAW.[1]

[Title XXVI., U. S. Rev. Stat.]

1. Bringing armed troops to places of election.
2. Interference with freedom of election, by officers of army and navy.
3. Race, color, or previous condition of servitude not to affect the right to vote.
4. Nor the performance of any prerequisite.
5. Penalty for refusing to give full effect to preceding section.
6. What shall entitle a person to vote.
7. Penalty for wrongfully refusing to receive a vote.
8. For unlawfully hindering a person from voting
9. Remedy for deprivation of office.
10. In cities or towns of over 20,000 inhabitants, upon written application of two citizens, the circuit judge to open court.

SUPERVISORS OF ELECTION.

11. In what cities and towns.
12. Court to be kept open.
13. District judge may perform duties of circuit judge.
14. Construction of preceding section.
15. Duties of supervisors of election.
16. Attendance at elections.
17. To personally scrutinize and count each ballot.
18. Their positions.
19. When molested.
20. Special deputies.
21. Duties of marshals.
22. Persons arrested to be taken forthwith before a judge, etc.
23. Assistance of bystanders.
24. Chief supervisors of elections.
25. Their duties.
26. Marshals to forward complaint to chief supervisors.
27. Supervisors and deputy marshals to be qualified voters, etc.
28. Certain persons not to make arrests, etc.
29. No more marshals or deputy marshals to be appointed than now authorized.
30. Pay of supervisors.

1. [§ 2002.] No military or naval officer, or other person engaged in the civil, military, or naval service of the United States,

[1] As to jurisdiction of the United States Circuit Courts, in causes arising under this chapter, see pars. 1, 2, chap. 3, *infra*, and appendix.

As to removal of causes growing out of this chapter from State courts to the United States Circuit Courts, see note to chap. 3, *infra*.

(*a*) The word "citizen" is often used to convey the idea of membership in a nation. In that sense, women, if born of citizen parents within the jurisdiction of the United States, have always been considered citizens of the

shall order, bring, keep, or have under his authority or control, any troops or armed men at the place where any general or special elec-

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United States, as much so before the adoption of the fourteenth amendment to the Constitution as since.

The right of suffrage was not necessarily one of the privileges or immunities of citizenship before the adoption of the fourteenth amendment, and that amendment does not add to these privileges or immunities. It simply furnishes additional guaranty for the protection of such as the citizen already had. At the time of the adoption of that amendment, suffrage was not co-extensive with the citizenship of the States; nor was it at the time of the adoption of the Constitution.

Neither the Constitution nor the fourteenth amendment made all citizens voters. A provision in a State Constitution, which confines the right of voting to "*male* citizens of the United States," is no violation of the Federal Constitution. In such a State, women have no right to vote. Minor *v.* Happersett, 21 Wall. 162. See United States v. Cruikshank, 92 U. S. 542.

(*b.*) In United States *v.* Susan B. Anthony, 11 Blatch. 200, a similar provision in the Constitution of New York was held not to conflict with the fourteenth amendment, and like principles on the general doctrine were declared by Justice Hunt. See note 2, page 20.

(*c.*) The elective franchise is not a natural right, and is made to rest, in the United States, upon the authority of law which defines the qualifications of those citizens who may exercise it.

By the first clause of the fourteenth amendment, all persons born in the United States are citizens thereof, and therefore capable of becoming voters. But the amendment does not execute itself; legislative action is necessary to authorize any particular class of persons to vote. Within the District of Columbia the laws of Congress on this subject extend only to male citizens. Spencer *v.* Board of Registration, 1 MacArthur, 169.

(*d.*) The fifteenth amendment took away the authority to discriminate against citizens of the United States on account of either race, color, or previous condition of servitude; but the power of exclusion upon all other grounds, including that of sex, remains intact. Neither does the fourteenth amendment curtail the power of the States as to who may vote within their limits. Van Valkenburg *v.* Brown, 43 Cal. 43.

(*e*)Neither does the fifteenth amendment confer the right of suffrage. U. S. *v.* Reese, 92 U. S. 214. See note to par. 3, chap. 2, *infra.*

(*f.*) Citizenship and the right to vote are neither identical nor inseparable; and the Constitution of Minnesota, although it authorizes resident unnaturalized foreigners to vote at State elections and hold office, does not make them citizens of the State, and such persons may remove causes to the Circuit Court of the United States, on the ground that they are aliens, although they have resided in the State for many years, and voted at elections, as authorized by the State Constitution, or held office under the laws of the State. Lanz *v* Randall, 4 Dill. 425.

(*g.*) See an interesting article on the subject of "The Elective Franchise," by Dr. Spear, in 16 Albany Law Jour. 272–7. He arrives at the following con-

tion is held in any State, unless it be necessary to repel the armed enemies of the United States, or to keep the peace at the polls.[1]

[25 Feb. 1865, ch. 52, § 1, v. 13, p. 437.]

2. [§ 2003.] No officer of the army or navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any

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clusions, after a full examination of the provisions of the Constitution, and the decisions thereon:

"That, with the exception of the District of Columbia and the Territories of the United States, in both of which Congress has exclusive jurisdiction, the question, who are voters in this country, and who are not, is wholly a matter of State authority and State discretion, subject to the following limitations: 1. That those who in each State are voters for members of the most numerous branch of its legislature are by the Constitution entitled to be voters for representatives in Congress. 2. That citizens of the United States shall not by any State be excluded from voting 'on account of race, color, or previous condition of servitude.' 3. That no State shall adopt any Constitution or exercise any power that is destructive of 'a republican form of government.' Outside of these limitations, the whole power of determining who shall exercise the elective franchise in the States, whether in respect to the election of State or national officers, is with the States themselves, and with each State with reference to its own citizens. So long as the States keep within these limits, Congress has nothing to do with the question, simply because it has no power of action." (p. 276.)

(*h.*) Congress has power to interfere for the protection of voters at federal elections, and that power existed before the adoption of the fourteenth or fifteenth amendments. U. S. *v.* Crosby, 1 Hughes, 448.

(*i.*) The words of the 2d section of the 4th article of the Constitution, which provides that "citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States," are to be given a limited, and not a full, operation. They do not mean the *right of election, of being elected, or of holding offices.* Campbell *v.* Morris, 3 Har. & M. (Md.) 554; Murray *v.* McCarty, 2 Mumf. (Va.) 398; Austin *v.* State, 10 Mo. 591.

(*j.*) The fifteenth amendment is a part of the supreme law of the land, and its effect is to annul those provisions of State Constitutions, and those enactments of State legislatures, which restrict the exercise of the right of suffrage to white persons. Wood *v.* Fitzgerald, 3 Oreg. 568.

(*k.*) The fifteenth amendment—giving the right to vote without restriction on account of race, color, etc—does not give negroes the right to vote independent of restrictions and qualifications—*e. g.*, as to age and residence—imposed by a State Constitution on whites. Anthony *v.* Halderman, 7 Kansas, 50.

See note to chapter 8, "Presidential Elections."

As to effect of naturalization, see note, par. (*k*), to chap. 6, Wood *v.* Fitzgerald, 3 Oreg. 568.

[1] See pars. 19, 20, 23, chap. 4.

State, or with the exercise of the free right of suffrage in any State.[1] [Ib.]

3. [§ 2004.] All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.[2] [31 May, 1870, ch. 114, § 1, v. 16, p. 140.]

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[1] See pars. 21–23, chap. 4.

[2] See par. 1, chap. 4, *infra*. See 15th Amend., pars. 23, 24, chap. 1.

(*a.*) Indictment against two inspectors of a municipal election of Kentucky, for refusing to receive and count, at such election, the vote of a citizen of African descent.

Rights and immunities created by, or dependent upon, the Constitution of the United States, can be protected by Congress. The form and manner of that protection may be such as Congress, in the legitimate exercise of legislative discretion, shall provide, and may be varied to meet the necessities of a particular right.

The fifteenth amendment does not confer the right of suffrage; that comes from the States; but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise, on account of their race, color, or previous condition of servitude, and empowers Congress to enforce that right by "appropriate legislation." The power of Congress to legislate at all, upon the subject of voting at State elections, rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections, is because of his race, color, or previous condition of servitude.

Section 1 of the act of May 31, 1870 (§ 2004, *supra*), simply declares a right, without providing a punishment.

Section 2 of that act (§§ 2005, 2006, *infra*), do not apply to inspectors of an election, as their only duty is to receive and count the votes of citizens already qualified.

Sections 3 and 4 of the act May 31, 1870 (§§ 2007–2009, 5506, *infra*), not being confined in their operation to unlawful discrimination on account of race, color, or previous condition of servitude, are beyond the limit of the fifteenth amendment and unauthorized. As these sections are, in general language, broad enough to cover wrongful acts without, as well as within, the constitutional jurisdiction, and can not be limited by judicial construction so as to make them operate only on that which Congress may rightfully prohibit and punish: *Held*, That Congress has not provided, by "appropriate legislation," for the punishment of an inspector of a municipal election for refusing to receive and count, at such election, the vote of a citizen of the United States of

4. [§ 2005.] When, under the authority of the Constitution or laws of any State or the laws of any Territory, any act is required to be done as a prerequisite or qualification for voting, and by such Constitution or laws persons or officers are charged with the duty of furnishing to citizens an opportunity to perform such prerequisite, or to become qualified to vote, every such person and officer

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African descent. U. S. *v.* Reese, 92 U. S. (2 Otto), 214. See U. S. *v.* Canter, 2 Bond, 389; U. S. *v.* Crosby, 1 Hugh. 448.

(*b.*) Under the fifteenth amendment to the Constitution, and the act of May 31, 1870, to enforce it, all persons declared citizens of the United States, by the fourteenth amendment, are entitled to vote in the State where they reside at all elections by the people, without distinction of race, color, or previous condition of servitude; but the several States, notwithstanding the amendment, have the power to deny the right of suffrage to any citizens of the United States, on account of age, sex, place of birth, vocation, want of property, or intelligence, neglect of civic duties, crime, or other cause not specified in the amendment. The power of Congress over the subject of the right to vote in the several States is conferred by the fifteenth amendment, and is confined to the enforcement of such amendment, by preventing the States from discriminating between citizens of the United States in the matter of the right to vote, on account of race, color, or previous condition of servitude.

Under the law of Oregon, when a person offers to vote, and is duly challenged, thereafter his right to vote depends upon his taking the oath that he is a qualified elector, as prescribed in section 13 of the election law (Oreg. Code, 700), and it then becomes the duty of the judges of election to tender him such oath, and administer it to him, if he is willing to take it. The taking of this oath by the party offering to vote after he is challenged is a necessary prerequisite to the right to vote within the meaning of section 2 of the act of Congress aforesaid (§§ 2005, 2006), and a refusal or omission upon the part of the judges to give such party an opportunity to take it is a violation of such section, if the same be done on account of his race, color, or previous condition of servitude, but not otherwise.

In an action to recover the penalty, under section 2 of the act of Congress aforesaid (§ 2006), it must appear from the complaint that the plaintiff was a citizen of the United States, and otherwise qualified to vote at the time and place mentioned in the complaint; and that the defendant refused or knowingly omitted to furnish the plaintiff an opportunity to become qualified to vote, as by refusing or knowingly omitting to swear the plaintiff to his qualification as an elector, when the law of the State made it his duty to do so, and that such refusal or omission was on account of the race, color, or previous condition of servitude of plaintiff. McKay *v.* Campbell, 1 Sawyer, 374; *s. c.*, 2 Abbott (U. S.), 120.

(*c.*) In the United States Circuit Court, for the Eastern District of Virginia, in the case of the U. S. *v.* Petersburg Judges and Registrars of Election, Bond, C. J., *held*, that the fourth section of the enforcement act (§ 5506), providing for the punishment of the crime of obstructing voters, is appropriate legislation under the fourteenth amendment, and is, therefore, constitutional; and an

shall give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote.[1] [Ib. § 2.]

5. [§ 2006.] Every person or officer charged with the duty specified in the preceding section, who refuses or knowingly omits to give full effect to that section, shall forfeit the sum of five hundred dollars to the party aggrieved by such refusal or omission, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the court may deem just.[2] [Ib.]

6. [§ 2007.] Whenever, under the authority of the Constitution or laws of any State or the laws of any Territory, any act is required to be done by a citizen as a prerequisite to qualify or entitle him to vote, the offer of such citizen to perform the act required to be done, shall, if it fail to be carried into execution by reason of the wrongful act or omission of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing to vote, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act.[3] [Ib. § 3.]

7. [§ 2008.] Every judge, inspector, or other officer of election whose duty it is to receive, count, certify, register, report, or give effect to the vote of such citizen, who wrongfully refuses or omits to receive, count, certify, register, report, or give effect to the vote of such citizen upon the presentation by him of his affidavit,

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indictment under it, charging the prevention of legally qualified citizens of Virginia from voting, and the refusal to register such citizens as voters, is valid and sufficient, although it does not charge that the acts were done on account of race, color, etc. (14 Am. L. R. 238.) Hughes, D. J., on the other hand, *held* (as the Supreme Court has since held, in U. S. *v.* Reese, *supra*), that the fourth section was unconstitutional; that the only protection which the United States can afford to the right to vote (which comes from the States), is that it shall not be abridged on account of race, color, etc. (Ib. 105.)

See Charge to Grand Jury, U. S. Cir. Court, Dist. W. Va., 2 Hughes, 518.

See note to par. 3, chap. 4, *infra*.

[1] See par. 1, chap. 4, *infra*.

See note to preceding section, par. (*b*), McKay *v.* Campbell; also par. (*a*).

[2] See par. 1, chap. 4, *infra*.

See par. (*b*) of note to par. 3, chap. 2, *supra*, McKay *v.* Campbell; also par. (*a*) of same note.

[3] See par. 3, chap. 4, *infra*.

See par. (*a*) of note to par. 3, chap. 2, *supra*.

stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall forfeit the sum of five hundred dollars to the party aggrieved by such refusal or omission, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the court shall deem just.[1] [Ib.]

8. [§ 2009.] Every officer or other person, having powers or duties of an official character to discharge under any of the provisions of this title, who, by threats or any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct any citizen from doing any act required to be done to qualify him to vote, or from voting at any election in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall forfeit five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the court may deem just.[2] [Ib. § 4, p. 141. 10 June, 1872, ch. 415, § 1, v. 17, p. 349.]

9. [§ 2010.] Whenever any person is defeated or deprived of his election to any office, except elector of president or vice-president, representative or delegate in Congress, or member of a State legislature, by reason of the denial to any citizen who may offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and the person so defeated or deprived may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it appears that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the Circuit or District Court of the United States of the circuit or

[1] See par. 3, chap. 4, *infra*, and par. 10, chap. 4, *infra*.

See par. (*a*) of note to par. 3, chap. 2, *supra*.

[2] See par. 2, chap. 3, *infra*; par. 1, chap. 4, *infra*; pars. 4–7, this chap., *supra*.

In an action on the case to recover the forfeit provided for in the foregoing section, the declaration must aver that the plaintiff was prevented from voting by force, bribery, threats, intimidation, or other unlawful means; and a declaration which alleges that the unlawful means by which the plaintiff was prevented from voting was the erroneous decision of the defendant, who was an officer of the election, without averring that the decision was willfully or maliciously wrong, is insufficient. Seeley *v.* Koox, 2 Woods, 368.

See par. (*a*) of note to par. 3, chap. 2, *supra*.

district in which such person resides. And the circuit or district court shall have, concurrently with the State courts, jurisdiction thereof, so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States, and secured herein.[1] [31 May, 1870, ch. 114, § 23, v. 16, p. 146.]

U. S. SUPERVISOR LAW.[2]

10. [§ 2011.] Whenever, in any city or town having upward of twenty thousand inhabitants, there are two citizens thereof, or whenever, in any county or parish, in any congressional district, there are ten citizens thereof, of good standing, who prior to any registration of voters for an election for representative or delegate in the Congress of the United States, or prior to any election at which a representative or delegate in Congress is to be voted for, may make known in writing, to the judge of the Circuit Court of the United States for the circuit wherein such city or town, county or parish, is situated, their desire to have such registration or such election, or both, guarded and scrutinized, the judge, within not less than ten days prior to the registration, if one there be, or, if no registration be required, within not less than ten days prior to the election, to open the circuit court at the most convenient point in said circuit.[3] [28 Feb. 1871, ch. 99, § 2, v. 16, p. 433; 10 June, 1872, ch. 415, § 1, v. 17, p. 438.]

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[1] See pars. 1, 2, chap. 3, *infra*.

Where the circuit court exercises jurisdiction under this section, an appeal will lie to the Supreme Court of the United States; but that court has no power to issue the writ of prohibition in such a case until an appeal is taken. Ex parte Warmouth, 17 Wall. 64.

See note to par. 2, chap. 3, *infra*, Harrison *v.* Hadley, 2 Dillon, 229.

[2] See pars. 8, 9, chap. 1, and appendix.

[3] (*a.*) Application of sundry citizens for the appointment of supervisors for the voting precincts of the City of Cincinnati, to supervise the election of members of Congress at the October election, 1878. Objection to such appointment on the ground that the law is unconstitutional, as conferring a non-judicial or political duty upon the court:

The power conferred upon the circuit court by sections 2011, 2012, 2025 Rev. Stat. is judicial. All the court is called upon to do, is to appoint officers to discharge the duties thereby imposed. Congress has the constitutional right to provide for the honest election of the members of its own body. It might have appointed these officers itself, but instead, it has seen fit to impose the power of appointment upon the circuit court. The Constitution (art. II, § 2), defining the duties of the president, provides that "the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments." This statute is

11. [§ 2012.] The court, when so opened by the judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the judge, and under the seal of the court, for each election district and voting precinct, in such city or town, or for such election district, or voting precinct, in the congressional district, as may have applied, in the manner herein-

in pursuance of this clause. Its provisions are obligatory upon us, and we must perform the duty and appoint the supervisors. In the matter of the application of sundry citizens for the appointment of supervisors, etc., United States Circuit Court, Southern District of Ohio, Baxter and Swing, J.J. 3 Cin. Weekly Law Bulletin, 714, 723.

In delivering the opinion of the court, Judge Baxter spoke as follows upon the design and scope of the supervisor law:

"The object and purpose of this law is to provide men under the authority of the Federal Government, not to sit in judgment upon the right of any individual, but to sit by and remain with the ballot-box and those who have control of it, until the votes are received and counted and the returns made. No injustice, it seems to me, can grow out of such a proceeding to any one. There is no encroachment, so far as I can see, upon the reserved rights of the States. If any thing should be done, in the judgment of the supervisor, that is wrong, he is required to make report of it to the supervisor-in-chief, and that supervisor is required to report the fact to the clerk of the House of Representatives, to the end that in a contested election in the House of Representatives, which is made the judge of the election and qualification of its own members, the House may have the benefit of that testimony in the determination of the question. . . . Congress, with a view to preserve the testimony and enable the House in the exercise of its jurisdiction of last resort—the determination of the question whether a man has been elected or not—with a view to preserve this testimony, has directed that it should be obtained and be preserved in the manner pointed out by this act." 3 Cin. Law Bulletin, 724. See appendix.

(*b.*) See as to the mode of administration of the provisions of law respecting the appointment of supervisors, etc., under an application in the State of Arkansas, in the year 1872; the form of designation of the district judge to act in place of the circuit judge; the details of carrying out the law; and its operation. 2 Dillon, 242–244.

(*c.*) In the case of Supervisors of Election (114 Mass. 247), the Supreme Court of Massachusetts decided that the Massachusetts statute of 1873, chap. 376, § 1—directing the justices of that court, on the request of five legal voters of any ward of a city, made prior to an election, to appoint supervisors of such election—is unconstitutional and void. Gray, C. J., says: "The statute in question can find no support in the act of Congress of 1871, chap. 99, conferring power to appoint similar officers upon the judges of the Circuit Court of the United States, or in the action of those judges pursuant thereto; because the Constitution of the United States does not so explicitly restrain the judges from exercising executive or political functions as does the Constitution of this Commonwealth; and because the circuit judges acted individually and without opportunity of conference, and, so far as we are informed, without any question of constitutional power being raised or argued." See appendix.

before prescribed, and to revoke, change, or renew such appointment from time to time, two citizens, residents of the city or town, or of the election district, or voting precinct, in the county or parish, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election.[1] [Ib.]

12. [§ 2013.] The circuit court, when opened by the judge, as required in the two preceding sections, shall therefrom and thereafter, and up to, and including, the day following the day of election, be always open for the transaction of business under this Title, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time; and a judge, sitting at chambers, shall have the same powers and jurisdiction, including the power of keeping order and punishing any contempt of his authority, as when sitting in court. [Ib.]

13. [§ 2014.] Whenever, from any cause, the judge of the circuit court, in any judicial circuit, is unable to perform and discharge the duties herein imposed, he is required to select, and assign to the performance thereof, in his place, such one of the judges of the district courts, within his circuit, as he may deem best;[2] and upon such selection and assignment being made, the district judge, so designated, shall perform and discharge, in the place of the circuit judge, all the duties, powers, and obligations imposed and conferred upon the circuit judge by the provisions hereof. [28 Feb. 1871, ch. 99, § 3, v. 16, p. 434.]

14. [§ 2015.] The preceding section shall be construed to authorize each of the judges of the Circuit Courts of the United States to designate one or more of the judges of the district courts, within his circuit, to discharge the duties arising under this title. [10 June, 1872, ch. 415, § 1, v. 17, p. 439.]

15. [§ 2016.] The supervisors of election, so appointed, are authorized and required to attend, at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for representative or delegate in Congress, and to challenge any person offering to register; to attend, at all times and places, when the names of registered voters may be marked for challenge, and to cause such names registered as they shall deem proper to be so marked; to make, when required, the lists, or either of them, provided for in section two thousand and twenty-six and verify the same; and upon any occasion, and at any time,

[1] See par. 27, ch. 2, *infra*, and pars. 16, 17, ch. 4, *infra*.

[2] For form of such designation and assignment, see 2 Dillon, 242, 243.

when in attendance upon the duty herein prescribed, to personally inspect and scrutinize such registry, and, for purposes of identification, to affix their signature to each page of the original list, and of each copy of any such list of registered voters, at such times, upon any day when any name may be received, entered, or registered, and in such manner as will, in their judgment, detect and expose the improper or wrongful removal therefrom, or addition thereto, of any name.[1] [28 Feb. 1871, ch. 99, § 4, v. 16, p. 434.]

16. [§ 2017.] The supervisors of election are authorized and required to attend at all times and places for holding elections of representatives or delegates in Congress, and for counting the votes cast at such elections; to challenge any vote offered by any person whose legal qualifications the supervisors, or either of them, may doubt; to be and remain where the ballot-boxes are kept, at all times after the polls are opened, until every vote cast at such time and place has been counted, the canvass of all votes polled wholly completed, and the proper and requisite certificates or returns made, whether the certificates or returns be required under any laws of the United States, or any State, Territorial, or municipal law, and to personally inspect any [and] scrutinize, from time to time, and at all times, on the day of election, the manner in which the voting is done, and the way and method in which the poll-books, registry-lists, and tallies or check-books, whether the same are required by any law of the United States, or any State, Territorial, or municipal law, are kept.[1] [Ib., § 5.]

17. [§ 2018.] To the end that each candidate for the office of representative or delegate in Congress may obtain the benefit of every vote for him cast, the supervisors of election are, and each of them is, required to personally scrutinize, count, and canvass each ballot in their election district or voting precinct cast, whatever may be the indorsement on the ballot, or in whatever box it may have been placed or be found; to make and forward to the officer who, in accordance with the provisions of section two thousand and twenty-five, has been designated as the chief supervisor of the judicial district in which the city or town wherein they may serve, acts, such certificates and returns of all such ballots as such officer may direct and require, and to attach to the registry list, and any and all copies thereof, and to any certificate, statement, or return, whether the same, or any part or portion thereof, be re-

[1] See pars. 16–18, chap. 4; also, Ex parte Siebold, appendix.

quired by any law of the United States, or of any State, territorial, or municipal law, any statement touching the truth or accuracy of the registry, or the truth or fairness of the election and canvass, which the supervisors of the election, or either of them, may desire to make or attach, or which should properly and honestly be made or attached, in order that the facts may become known.[1] [Ib.]

18. [§ 2019.] The better to enable the supervisors of election to discharge their duties, they are authorized and directed, in their respective election districts or voting precincts, on the day of registration, on the day when registered voters may be marked to be challenged, and on the day of election, to take, occupy, and remain in such position, from time to time, whether before or behind the ballot-boxes, as will, in their judgment, best enable them to see each person offering himself for registration or offering to vote, and as will best conduce to their scrutinizing the manner in which the registration or voting is being conducted; and at the closing of the polls for the reception of votes, they are required to place themselves in such position, in relation to the ballot-boxes, for the purpose of engaging in the work of canvassing the ballots, as will enable them to fully perform the duties in respect to such canvass provided herein, and shall there remain until every duty in respect to such canvass, certificates, returns, and statements has been wholly completed.[2] [Ib. § 6, p. 435.]

19. [§ 2020.] When, in any election district or voting precinct

[1] See pars. 16–18, chap. 4; and Ex parte Siebold, do. Clarke, appendix.

On an indictment under section 5522, for obstructing a supervisor of election, Swing, J., charged the jury that:

"The law imposes upon the supervisor the duty of a strict scrutiny and count of the ballots cast, and to place himself in such relation to the ballot-box as to be enabled to do this to the best advantage. If it is necessary for him, in order to carry out this duty, to take the ballots in his hand, he has the authority under the statute to do so; and the defendant had no right to prevent the supervisor from so doing.

"In case Congress does not prescribe regulations for the election of its members, the States may do so; but when Congress passes a law on the subject, it becomes the supreme law of the land. Hence, if there is any conflict between the statute of Ohio, providing that one judge of election shall take up the ballots, a second judge examine them, and a third string them, and this law directing the supervisors to carefully scrutinize, canvass, and count all the ballots, then the law of the State must yield to that of the United States." U. S. *v.* Buck Brady, U. S. Circuit Court, Southern District of Ohio, Oct. Term, 1878, MS. Op. (See Cincinnati daily papers, Nov. 21, 1878—not reported elsewhere.)

[2] Section 2019 empowers the supervisor to be in the room with the judges of election, and in any place or position where, in his judgment, he can best perform his duties. U. S. *v.* Gitma, 3 Hugh. 549. See notes on pages 17 and 18, and paragraph 17, page 39. See also, Ex parte Siebold, appendix.

in any city or town, for which there shall have been appointed supervisors of election for any election at which a representative or delegate in Congress is voted for, the supervisors of election are not allowed to exercise and discharge, fully and freely, and without bribery, solicitation, interference, hinderance, molestation, violence, or threats thereof, on the part of any person, all the duties, obligations, and powers conferred upon them by law, the supervisors of election shall make prompt report, under oath, within ten days after the day of election, to the officer who, in accordance with the provisions of section two thousand and twenty-five, has been designated as the chief supervisor of the judicial district in which the city or town wherein they served, acts, of the manner and means by which they were not so allowed to fully and freely exercise and discharge the duties and obligations required and imposed herein. And upon receiving any such report, the chief supervisor, acting both in such capacity and officially as a commissioner of the circuit court, shall forthwith examine into all the facts, and he shall have power to subpena and compel the attendance before him of any witness, and to administer oaths and take testimony in respect to the charges made; and, prior to the assembling of the Congress for which any such representative or delegate was voted for, he shall file with the clerk of the House of Representatives all the evidence by him taken, all information by him obtained, and all reports to him made.[1] [Ib. § 7.]

20. [§ 2021.] Whenever an election at which representatives or delegates in Congress are to be chosen is held in any city or town of twenty thousand inhabitants or upward, the marshal for the district in which the city or town is situated shall, on the application, in writing, of at least two citizens residing in such city or town, appoint special deputy marshals, whose duty it shall be, when required thereto, to aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted; to attend in each election district or voting precinct at the times and places fixed for the registration of voters and at all times or places when and where said registration may by law be scrutinized, and the names of registered voters be marked for challenge; and also to attend, at all times for holding elections, the polls in such district or precinct.[2] [Ib. § 8, p. 436.]

[1] See pars. 16–18, chap. 4, *infra*.

[2] Unless for the purpose of suppressing actual violence or of preserving the peace when actually disturbed, or protecting the supervisor when actually needing protection, or preventing fraud actually attempted in the room, the deputy marshals have no right to be in the room in which the judges and supervisors of election are performing their duties, or to go behind the ballot boxes, unless requested to do so by both judges and supervisor. U. S. *v.* Gitma, 3 Hugh. 549, 551. But see Ex parte Siebold, do. Clarke, appendix.

21. [§ 2022.] The marshal and his general deputies, and such special deputies, shall keep the peace, and support and protect the supervisors of elections in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling-place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who commits, or attempts or offers to commit, any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States; but no person shall be arrested without process for any offense not committed in the presence of the marshal or his general or special deputies, or either of them, or of the supervisors of election or either of them, and, for the purpose of arrest or the preservation of the peace, the supervisors of election shall, in the absence of the marshal's deputies, or if required to assist such deputies, have the same duties and powers as deputy marshals; nor shall any person, on the day of such election, be arrested without process for any offense committed on the day of registration.[1] [Ib.]

22. [§ 2023.] Whenever any arrest is made, under any provision of this Title, the person so arrested shall forthwith be brought before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. [Ib., § 9.]

23. [§ 2024.] The marshal, or his general deputies, or such special deputies as are thereto specially empowered by him, in writing, and under his hand and seal, whenever he, or either or any of them, is forcibly resisted in executing their duties under this Title, or shall, by violence, threats, or menaces, be prevented from executing such duties, or from arresting any person who has committed any offense for which the marshal or his general or special deputies are authorized to make such arrest, are, and each of them is, empowered to summon and call to his aid the bystanders or *posse comitatus* of his district. [Ib., § 12, p. 437.]

24. [§ 2025.] The Circuit Courts of the United States for each judicial circuit shall name and appoint, on or before the first day of May, in the year eighteen hundred and seventy-one, and thereafter as vacancies may from any cause arise, from among the cir-

[1] See notes on pages 17 and 18, and pars. 16 and 17, pp. 38, 39.

cuit court commissioners for each judicial district in each judicial circuit, one of such officers, who shall be known for the duties required of him under this Title as the chief supervisor of elections of the judicial district for which he is a commissioner, and shall, so long as faithful and capable, discharge the duties in this Title imposed. [Ib., § 13.]

25. [§ 2026.] The chief supervisor shall prepare and furnish all necessary books, forms, blanks, and instructions for the use and direction of the supervisors of election in the several cities and towns in their respective districts. He shall receive the applications of all parties for appointment to such positions; upon the opening, as contemplated in section two thousand and twelve, of the circuit court for the judicial circuit in which the commissioner so designated acts; he shall present such applications to the judge thereof, and furnish information to him in respect to the appointment by the court of such supervisors of election; he shall require of the supervisors of election, when necessary, lists of the persons who may register and vote, or either, in their respective election districts or voting precincts, and cause the names of those upon any such list, whose right to register or vote is honestly doubted, to be verified by proper inquiry and examination at the respective places by them assigned as their residences; and he shall receive, preserve, and file all oaths of office of supervisors of election, and of all special deputy marshals appointed under the provisions of this Title, and all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed.[1] [Ib.]

26. [§ 2027.] All United States marshals and commissioners who in any judicial district perform any duties under the preceding provisions relating to, concerning, or affecting the election of representatives or delegates in the Congress of the United States, from time to time, and with all due diligence, shall forward to the chief supervisor in and for their judicial district, all complaints, examinations, and records pertaining thereto, and all oaths of office, by them administered to any supervisor of election or special duputy marshal, in order that the same may be properly preserved and filed.[2] [Ib.]

27. [§ 2028.] No person shall be appointed a supervisor of election or a deputy marshal, under the preceding provisions, who is not, at the time of his appointment, a qualified voter of the city,

[1] See par. 19, this chap., also pars. 16, 17, ch. 4, *infra*.

[2] See par. 16, ch. 4, *infra*.

town, county, parish, election district, or voting precinct in which his duties are to be performed. [10 June, 1872, ch. 415, § 1, v. 17, p. 349.]

28. [§ 2029.] The supervisors of election appointed for any county or parish in any congressional district, at the instance of ten citizens, as provided in section two thousand and eleven, shall have no authority to make arrests, or to perform other duties than to be in the immediate presence of the officers holding the election, and to witness all their proceedings, including the counting of the votes and the making of a return thereof. [Ib.]

29. [§ 2030.] Nothing in this title shall be construed to authorize the appointment of any marshals or deputy marshals in addition to those authorized by law, prior to the tenth day of June, eighteen hundred and seventy-two. [Ib.]

30. [§ 2031.] There shall be allowed and paid to the chief supervisor, for his services as such officer, the following compensation, apart from and in excess of all fees allowed by law for the performance of any duty as circuit court commissioner: For filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the preceding provisions, ten cents; for affixing a seal to any paper, record, report, or instrument, twenty cents; for entering and indexing the records of his office, fifteen cents per folio; and for arranging and transmitting to Congress, as provided for in section two thousand and twenty, any report, statement, record, return, or examination, for each folio, fifteen cents; and for any copy thereof, or of any paper on file, a like sum. And there shall be allowed and paid to each supervisor of election, and each special deputy marshal who is appointed and performs his duty under the preceding provisions, compensation at the rate of five dollars per day for each day he is actually on duty, not exceeding ten days; but no compensation shall be allowed, in any case, to supervisors of election, except to those appointed in cities or towns of twenty thousand or more inhabitants; and the fees of the chief supervisors shall be paid at the treasury of the United States; such accounts to be made out, verified, examined, and certified as in the case of accounts of commissioners, save that the examination or certificate required may be made by either the circuit or district judge.[1] [28 Feb., 1871, ch. 99, § 14, v. 16, p. 438; 10 June, 1872, ch. 415, § 1, v. 17, p. 349.]

[1] There is a permanent annual appropriation to pay fees of supervisors of elections. § 3689, U. S. Rev. St., p. 729.

CHAPTER III.

JURISDICTION OF THE UNITED STATES COURTS.[1]

1. District courts. 2. Circuit courts.

1. [§ 563.] The district courts shall have jurisdiction as follows:

Thirteenth. Of all suits to recover possession of any office, except that of elector of president or vice-president, representative or delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, that such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the States.[2] [31 May, 1870, ch. 114, § 23, v. 16, p. 146.]

2. [§ 629.] The circuit courts shall have original jurisdiction, as follows:[3]

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[1] See par. 9, ch. 2, *supra*.

The board of canvassers of the State of South Carolina were committed for contempt in not complying with an order of the State court, directing them to canvass the vote of the State. On an application for discharge, on *habeas corpus* to the United States Circuit Court, Bond, J., *held*, That the proceeding of the Supreme Court of the State was beyond its jurisdiction; that the board of canvassers were clothed, under the law, with discretionary powers, which required them to discriminate the votes, to determine and certify the candidates elected, after scrutiny, and that they were a part of the executive department of the government, and were in no wise subject to control as to what they should do after they had commenced to perform that duty to the judicial department; and that, as this was a general election, at which members of Congress were to be elected, and electors of president and vice-president of the United States to be chosen, they were acting in a federal capacity, or, in other words, in pursuance of a law of the United States, and, therefore, if disturbed in the exercise of their functions, they were entitled to the protection of the courts of the United States. Ex parte Hayne et al., 4 Cent. Law Jour. 72.

[2] See par. 9, chap. 2, *supra*. See note 2 to par. 2, next page.

[3] Since the adoption of the Revised Statutes, Congress has passed "an act to determine the jurisdiction of circuit courts," to regulate the removal of causes

Twelfth. Of all suits brought by any person to recover damages for any injury to his person or property, on account of any act done by him, under any law of the United States . . . to enforce the right of citizens of the United States to vote in the several States.[1] [Feb. 28, 1871, chap. 99, § 15, v. 16, p. 438; May 31, 1870, chap. 114, v. 16, p. 140.]

Thirteenth. Of all suits to recover possession of any office, except that of elector of president or vice-president, representative or delegate in Congress, or member of a State legislature, authorized by law to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law to enforce the right of citizens of the United States to vote in all the States.[2] [May 31, 1870, chap. 114, § 23, v. 16, p. 146.]

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thereto, etc. (March 3, 1875, chap. 137, v. 18, p. 470), which covers part, at least, of the subjects embraced in the provisions copied into the text and stated in the note which follows; but how far it operates to repeal these provisions of the Revised Statutes, is not definitely declared.

Removal of causes from State to Federal courts.—Any civil suit or criminal prosecution brought against any officer of the United States, or other person, on account of any act done under the provisions of Title "The Elective Franchise," or on account of any right, etc., claimed by such officer or other person thereunder, in any State court, may be removed, at any time before trial or final hearing thereof, to the circuit court, on the petition of such defendant. The requisites of such petition defined and mode of procedure pointed out. (U. S. Rev. St. § 643.) How record supplied, when copy refused by clerk of State court. (Ib. § 645.)

[1] See chap. 2, "Elective Franchise," *supra.*

[2] See par. 9, chap. 2, *supra.*

The federal courts have no jurisdiction in any form of action or proceeding over cases of contested elections for *State* offices, except in the single case provided for in the twenty-third section of the enforcement act, in which the sole question touching the title to the office arises out of the denial of the right to vote to citizens on account of race, color, or previous condition of servitude. The circuit courts can exercise jurisdiction in no case solely upon the ground that it falls within the constitutional grant of judicial power to the United States; there must also be an act of Congress expressly conferring the jurisdiction. A citizen does not lose his rights because Congress has not vested in the courts of the United States original jurisdiction in cases where rights and benefits are claimed under the Constitution of the United States. The State courts are open to such citizen, and in such cases the rule of decision in a State

Fifteenth. Of all suits to recover pecuniary forfeitures under any act to enforce the right of citizens of the United States to vote in the several States.[1] [May 31, 1870, chap. 114, §§ 2–4, 8, v. 16, pp. 140–142; Feb. 28, 1871, chap. 99, § 15, v. 16, p. 438.]

court is the same as it would be in a United States court. The court comments upon the thirteenth, fourteenth, and fifteenth amendments, the civil rights act, and the enforcement act, and is of the opinion, under the evidence in the case, that they do not apply to the alleged exclusion of voters at the election in controversy, as they were not excluded on the ground of *race, color, or previous condition of servitude.* Injunction denied, bill dismissed, and the case distinguished from Kellogg *v.* Warmouth, in the District of Louisiana, in which the exclusion on account of race, color, etc., was *directly charged.* Harrison *v.* Hadley, 2 Dillon, 229.

[1] See chap. 2, "Elective Franchise," *supra*, and note to par. 8, chap. 2, *supra*, Seely *v.* Koox.

CHAPTER IV.

CRIMES[1] AGAINST THE ELECTIVE FRANCHISE AND CIVIL RIGHTS OF CITIZENS.[2]

[Title LXX., Ch. 7, U. S. Rev. Stat.]

1. Preventing, etc., citizens from voting.
2. Intimidating voters by bribery or threats.
3. Conspiracy to injure or intimidate citizens in the exercise of civil rights.
4. Other crimes committed while violating the preceding sections.
5. Depriving citizens of civil rights under color of State laws.
6. Fraudulent voting, etc., at elections for representatives to Congress.
7. Fraudulent registration, etc.
8. What deemed a registration under last section.
9. Voting, or offering to vote, in certain cases *prima facie* evidence, etc.
10. Violation of duty by officers of election.
11. Obstructing execution of process in civil rights cases, etc.
12. Marshal refusing to receive or execute process.
13. Conspiracy to prevent accepting or holding office under United States, etc.
14. Conspiracy to deprive any person of the equal protection of the laws.
15. Conspiracy to prevent the support of any candidate, etc.
16. Supervisor of election, etc., neglecting to discharge duties.
17. Interfering with supervisor of election, marshals, or deputies.
18. Obstructing verification of registration lists, etc.
19. Unlawful presence of troops at elections.
20. Intimidation of voters by officers, etc., of army or navy.
21. Officers of army or navy prescribing qualifications of voters.
22. Officers, etc., of army or navy interfering with officers of election, etc.
23. Disqualification for holding office.

1. [§ 5506.] Every person who, by any unlawful means,

[1] There is a general provision as to conspiracy, as follows:

"§ 5440. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars and be imprisoned not more than two years."

See par. (c) of note 1. page 32

[2] *Provisions governing procedure under this chapter.*—The district attorneys,

hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct any citizen from doing any act required to be done to qualify him to vote, or from voting at any electien in any State, Territory, district. county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less thau five hundred dollars, or be imprisoned not less than one month, nor more than one year, or be punished by both such fine and imprisonment.[1] [31 May, 1870, chap. 114, § 4, v. 16, p. 141.]

2. [§ 5507.] Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising, the right of suffrage, to whom that right is guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, oi of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section.[2] [Ib., § 5.]

3. [§ 5508.] If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise and enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hin-

marshals, deputies, and commissioners are required to institute proceedings, at the expense of the United States, against persons violating any of the provisions of chapter 7. [United States Revised Statutes, § 1982.] The circuit courts shall increase the number of commissioners, so as to afford a speedy trial; and commissioners are required to exercise the same powers and duties, with respect to such offenses, as they are authorized to do as to others. [Ib. § 1983.] The commissioners are authorized to appoint persons to serve warrants, who shall have power to call to their aid the *posse comitatus;* and such warrants shall run anywhere in the State where issued. [Ib. § 1984.] Marshal and deputies required to execute all process. [Ib. § 1985.] Fees of officers. [Ib. § 1986.] Fees of persons appointed under section 1984. [Ib. § 1987.] President may direct judge and other officers to proceed to such place in the district as he may designate, for purpose of more speedy arrest and trial of offenders. [Ib. § 1988.] President may employ military and naval forces in aid of execution of judicial process. [Ib. § 1989.]

[1] See pars. 3–9, chap. 2, *supra.*

See note to par. 3, chap. 2, *supra*, and to par. 3, this chap., *infra.*

See article in 16 Albany Law Jour. 275, 276.

[2] See par. 3, chap. 2, *supra.*

der his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars, and imprisoned not more than ten years; and shall, moreover, be thereafter, ineligible to any office or place of honor, profit or trust, created by the Constitution or laws of the United States.[1] [Ib., § 6.]

[1] Indictment for conspiracy under section 6 of the enforcement act of May 31, 1870 (the above section of the revised statutes).

Citizens are the members of the political community to which they belong. They are the people who compose the community, and who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as their collective rights. The duty of a government to afford protection is limited always by the power it possesses for that purpose.

There is in our political system a government of each of the several States and a government of the United States. Each is distinct from the others, and has citizens of its own, who owe it allegiance, and whose rights, within its jurisdiction, it must protect. The same person may be at the same time a citizen of the United States and a citizen of a State; but his rights of citizenship under one of these governments will be different from those he has under the other. The government of the United States, although it is, within the scope of its powers, supreme and beyond the States, can neither grant nor secure to its citizens rights or privileges which are not expressly or by implication placed under its jurisdiction. All that can not be so granted or secured are left to the exclusive protection of the States.

The right of the people peaceably to assemble for lawful purposes, with the obligation on the part of the States to afford it protection, existed long before the adoption of the Constitution. The protection of its enjoyment was not, though, intrusted to the federal government; the people must look to the States where the power for that purpose was originally and still remains. The right to bear arms, also, is not protected by the Constitution; it is a matter of State regulation.

The right of the people peaceably to assemble, for the purpose of petitioning Congress for a redress of grievances, or for any thing else connected with the powers and duties of national government, is an attribute of national citizenship, and, as such, under the protection of and guaranteed by the United States. The very idea of a government, republican in form, implies that right, and an invasion of it presents a case within the sovereignty of the United States.

Sovereignty, for the protection of the rights of life and personal liberty within the respective States, rests alone with the States.

The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law, and from denying to any person within its jurisdiction the equal protection of the laws; but it adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty

4. [§ 5509.] If, in the act of violating any provision in either of the two preceding sections, any other felony or misdemeanor be committed, the offender shall be punished for the same with such

of protecting all its citizens in the enjoyment of an equality of rights was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the national government is limited to the enforement of this guaranty.

The counts of an indictment which charge the defendants with having banded and conspired to injure, oppress, threaten, and intimidate citizens of the United States of African descent, therein named; and which in substance respectively allege that the defendants intended thereby to hinder and prevent such citizens in the free exercise and enjoyment of rights and privileges granted and secured to them in common with other good citizens by the Constitution and laws of the United States; to hinder and prevent them in the free exercise of their right peacefully to assemble for lawful purposes; prevent and hinder them from bearing arms for lawful purposes; deprive them of their respective several lives and liberty of person without due process of law; prevent and hinder them in the free exercise and enjoyment of their several right to the full and equal benefit of the law; prevent and hinder them in the free exercise and enjoyment of their several and respective right to vote at any election to be thereafter by law had and held by the people in and of the State of Louisiana, or to put them in great fear of bodily harm, and to injure and oppress them, because, being and having been in all things qualified, they had voted at an election theretofore had and held according to law by the people of said State,—do not present a case within the 6th section of the enforcement act of May 31, 1870. To bring a case within the operation of that statute, it must appear that the right the enjoyment of which the conspirators intended to hinder or prevent was one granted or secured by the Constitution or laws of the United States. If it does not so appear, the alleged offense is not indictable under any act of Congress.

The counts of an indictment which, in general language, charge the defendants with an intent to hinder and prevent citizens of the United States, of African descent, therein named, in the free exercise and enjoyment of the rights, privileges, immunities, and protection granted and secured to them respectively as citizens of the United States and of the State of Louisiana, because they were persons of African descent, and with intent to hinder and prevent them in the several and free exercise and enjoyment of every, each, all, and singular the several rights and privileges granted and secured to them by the Constitution and laws of the United States, do not specify any particular right the enjoyment of which the conspirators intended to hinder or prevent, are too vague and general, lack the certainty and precision required by the established rules of criminal pleading, and are therefore not good and sufficient in law.

In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right "to be informed of the nature and cause of the accusation." The indictment must set forth the offense with clearness and all necessary certainty to apprise the accused of the crime with which he stands charged; and every ingredient of which the offense is composed must be ac-

punishment as is attached to such felony or misdemeanor by the laws of the State in which the offense may be committed.[1] [Ib., § 7.]

5. [§ 5510.] Every person who, under color of any law, statute, ordinance, regulation, or custom, subjects, or causes to be subjected, any inhabitant of any State or Territory to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color or race, than are prescribed for the punishment of citizens, shall be punished by a fine of not more than one thousand dollars, or by imprisonment not more than one year, or by both. [Ib., § 17, p. 144.]

6. [§ 5511.] If, at any election for representative or delegate in Congress, any person knowingly personates and votes, or attempts

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curately and clearly alleged. It is an elementary principle of criminal pleading, that, where the definition of an offense, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but must state the species—it must descend to particulars. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances.

By the act under which this indictment was found, the crime is made to consist in the unlawful combination, with an intent to prevent the enjoyment of any right granted or secured by the Constitution, etc. All rights are not so granted or secured. Whether one is so or not, is a question of law to be decided by the court. The indictment should, therefore, state the particulars, to inform the court as well as the accused. It must appear from the indictment that the acts charged will, if proved, support a conviction for the offense alleged. United States *v.* Cruikshank, 92 U. S. (2 Otto), 542; *s. c.* on the circuit, 1 Woods, 308.

See note to par. 3, chap. 2, *supra*.

[1] The first section (§ 2004, *supra*) of the act of May 31, 1870, declared a right, and section 7 of the same act defines the punishment for its violation. It is not necessary that each section of the act should contain or disclose the penalty for its infraction. That is often, as in this statute, referred to a later, and generally to the closing, section of the act defining the crime or offense, and is made applicable to all the antecedent sections. In charging a statutory offense, it is generally sufficient to set it out in the words of the statute. U. S. *v.* Crosby, 1 Hughes, 448.

to vote, in the name of any other person, whether living, dead, or fictitious; or votes more than once at the same election for any candidate for the same office;[1] or votes at a place where he may not be lawfully entitled to vote; or votes without having a lawful right to vote;[2] or does any unlawful act to secure an opportunity to vote for

[1] It is no defense to a prosecution for voting a second time at an election, to show that the first vote was illegal and not entitled to be counted. State *v.* Perkins, 42 Vt. 399; and see, Harbaugh *v.* Cicott, 33 Mich. 241.

For other State decisions on prosecutions for voting more than once, see Gordon *v.* State, 21 Minn. 22; Wilson *v.* State, 52 Ala. 299.

[2](*a.*) A female voted at an election in the State of New York for a representative in Congress. Under the Constitution and laws of the State of New York, none but males were authorized to vote for members of the most numerous branch of the State legislature. She possessed all the qualifications entitling a person to vote at such election, except that she was not a male. She was indicted, under section 19 of the act of May 31, 1870, for knowingly voting at such election without having a lawful right to vote. On the trial, it was contended, in defense, that, as she had all the qualifications required for electors of representatives in Congress, by article I, section 2, subdivision 1 of the Constitution of the United States (namely, the qualifications requisite for electors of the most numerous branch of the State legislature), except that of being a male, the restriction of voting to males, by the Constitution and laws of New York was void, as a violation of the fourteenth amendment of the Constitution of the United States, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States:" *Held*, that such restriction was not void.

The thirteenth, fourteenth, and fifteenth amendments of the Constitution of the United States considered.

The fourteenth amendment defines and declares who shall be citizens of the United States, and protects only such rights as are rights belonging to persons as citizens of the United States, and not rights belonging to persons as citizens of a State.

The rights of citizens of a State defined:

The right or privilege of voting is one arising under the Constitution of the State, and not under the Constitution of the United States.

It is no defense to such indictment, that the defendant believed she had a right to vote, and voted in reliance on that belief.

The defendant, knowing that she was a female, and that the Constitution of New York prohibited her from voting, and having voted, the court refused to submit to the jury the question whether she intended, by voting, to violate the statute, or any other question, and directed the jury to find a verdict of guilty, and denied a request, by the defendant's counsel, that the jury be polled: *Held*, on motion for new trial, that such direction was proper, and not a violation of the right of trial by jury.

On the trial of an indictment, the court has the power, and it is its duty, to

himself, or any other person; or by force, threat, intimidation, bribery, reward, or offer thereof, unlawfully prevents any qualified voter[1] of any State or of any Territory, from freely exercising the right of suffrage,[2] or by any such means induces any voter to refuse to exercise such right, or compels or induces by any such means any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to

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direct a verdict of guilty, whenever the facts constituting the guilt are undisputed. U. S. *v.* Susan B. Anthony, 11 Blatch. 200.

(*b.*) Voting out of the ward of the voter's residence is not an offense under a statute prohibiting any person from voting "at any election who is not entitled." Nettles *v.* State, 49 Ala. 35.

[1] An allegation that a party claimed a right to vote at an election, is not equivalent to an allegation that such party is a "qualified voter." United States *v.* Hendric, 2 Sawyer, 479.

[2] (*a.*) On indictment under section 19 of the act to inforce the right of citizens to vote, etc., approved May 31, 1870, for "unlawfully preventing certain qualified voters from freely exercising the right of suffrage," where the proof that the defendant, with others, attacked a number of voters, waiting in line for their turn to cast their ballots, and expelled them from the room; and that said voters afterward returned and voted: *Held*, 1. That the defendant committed the offense which Congress meant to define and punish in the clause of the section under which the indictment is drawn. 2. That the prevention took place, and the offense was complete, by the expulsion of the voters from the polls, although the prosecutors afterward voted.

The words, "exercising the right of suffrage," in section 19 of the act of May 31, 1870, may be held to mean "voting," without bringing that section in conflict with section 4 of the act (§§ 2009, 5506); provided, that the penalties prescribed in section 19 be understood to apply to offenses committed at elections for members of Congress, and those in section 4, to State, county, and municipal elections. *Query*, Whether, under the fifteenth amendment to the Constitution of the United States, Congress has power to pass any law to operate upon private individuals? United States *v.* Souders, 2 Abbott's U. S. 456.

(*b.*) An allegation that the defendant knowingly offered to give O. a bribe to vote, the said O. being then under twenty-one years of age, held to mean that the defendant knew O. was under age, when he offered him the bribe. United States *v.* O'Neill, 2 Sawyer, 481.

(*c.*) The court takes notice that the State of Oregon is a representative and judicial district of the United States.

An allegation that an election was held *at* East Portland precinct, equivalent, under the circumstances, to one that an election was held *in* such precinct. An averment that an election was held in a certain precinct on the day prescribed for holding such election is sufficient, it being presumed, under the circumstances, that such election was legal. *Semble*, That an allegation that defendant gave B. $2.50 to vote at said election, is sufficiently certain. United States *v.* Johnson, 2 Sawyer, 482.

vote; or interferes in any manner with any officer of such election in the discharge of his duties; or by any such means, or other unlawful means, induces any officer of an election or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty or any law regulating the same; or knowingly receives the vote of any person not entitled to vote, or refuses to receive the vote of any person entitled to vote, or aids, counsels, procures, or advises any such voter, person, or officer to do any act hereby made a crime,[1]

[1] (*a.*) An allegation that the defendant offered a party $2.50 to vote is equivalent to an allegation that he counseled and advised such party to vote.

Allegations in the first count in an indictment may be adopted in the second one, by referring to them; and the words, "said Johnson," in a second count, indicate the Johnson mentioned and described in the first count, including his status or condition, as therein stated, with reference to the charge made in the indictment. United States *v.* Hendric, 2 Sawyer, 476.

(*b.*) Where the offense is purely statutory, having no relation to the common law, it is, as a general rule, sufficient, in the indictment, to charge it in the words of the statute. Therefore, *Held*, On demurrer to an indictment under this section, that charged, in various counts, that the defendant "did then and there procure certain persons to vote more than once," and that he "did then and there counsel certain persons to vote more than once, and in places where they had no legal right to vote," and stating, with particularity, the election at which, the time when, the place where, and the person who was procured and counseled—that the offense is sufficiently described, and the demurrer must be overruled. United States *v.* White (United States Circuit Court, Southern District of Ohio, Swing, J.), 2 Cincinnati Law Bulletin, 27.

(*c.*) The case of U. S. *v.* Wrape, before Gresham, J., U. S. Circuit Court, Dist. of Indiana (4 Cin. Law Bull. 433), was an indictment under § 5440 (*supra*, first note in chap. 4), for conspiring to import divers persons into Jennings county, Indiana, to vote illegally at the October election, 1878, for representatives in Congress, and it set out various acts done to effect the object of such conspiracy. The offenses charged as those the defendants conspired to commit, were doing unlawful acts to secure an opportunity for themselves or others to vote, and knowingly aiding, etc., persons to vote at a place where they may not be entitled to vote, and are found in § 5511. The judge charged the jury that it mattered not what the motive of the change of residence of such voters into Jennings county was, if it was real and not colorable; that the defendants had a right to persuade others to remove their residence to that county; that if the defendants, without fault or negligence, believed the alleged illegal voters to be residents of that county, they are not guilty; but if you find that there was a conspiracy to import persons into Jennings county, to vote illegally at such election, and to make, or cause to be made, affidavits that such persons were *bona fide* residents thereof, to secure an opportunity to them to vote, knowing that such persons were not residents

or omit to do any duty the omission of which is hereby made a crime, or attempt to do so, he shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three years, or by both, and shall pay the costs of prosecution. [Ib., § 19.]

7. [§ 5512.] If, at any registration of voters for an election for representative or delegate in the Congress of the United States, any person knowingly personates and registers, or attempts to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently registers, or fraudulently attempts to register, not having a lawful right so to do;[1] or does any unlawful

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thereof; or if the defendants conspired together, to aid, counsel, etc., persons to go into Jennings county, to vote illegally, and if, in either case, they did any of the acts alleged as done in furtherance of such conspiracy, the defendants engaged therein are guilty; and it is not necessary that any illegal votes were cast or offered, or that a single person went into Jennings county to vote illegally. Rule as to proof of conspiracy, reasonable doubt, etc., stated.

[1] (*a.*) An indictment under section 5512 of the Revised Statutes, for fraudulent registration, alleged, in one count, that the defendant, "having no lawful right to register, fraudulently and willfully did register," and, in another count, "that he had no lawful right to register, as he well knew, by reason of the fact that he was then and there an alien, and had not been admitted to become a citizen of the United States." *Held*, that the indictment was bad, in not pointing out the fraud, and in omitting to state facts showing that the defendant was not entitled to register; and that the averment that the accused was an alien and had not been admitted to become a citizen of the United States, did not show that he had no right to register, or that he was not a citizen of the United States, or that he had no right to vote. United States *v.* Hirschfield, 13 Blatch. 330.

(*b.*) The twentieth section of the act of May 31, 1870, providing for the punishment of persons who illegally register, or attempt to register, at a registration of voters for an election for a representative in Congress, and enacting that a registration made under the laws of a State shall be deemed to be a registration within such act (§ 5513), is not invalid, as being an infraction of the Constitution of the United States. Such section does not establish a test of the qualification of an elector, or affect such qualification, and is not repugnant to article 1, section 2, of the Constitution, which prescribes the qualifications of electors of members of the House of Representatives. Authority to enact such section is derivable from article 1, section 4, subdivision 1, of the Constitution, which provides that Congress may, at any time, by law, make or alter regulations as to the time, place, and manner of holding elections for representatives in Congress, and from the last subdivision of article 1, section 8, which provides that Congress shall have the power to make all laws necessary or proper for carrying into execution powers thereinbefore given.

Article 1, section 5, subdivision 1, of the Constitution, which provides that

act to secure registration for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevents or hinders any person having a lawful right to register from duly exercising such right; or compels or induces, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not legally entitled thereto, or interferes in any manner with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induces any officer of registration to violate or refuse to comply with his duty or any law regulating the same; or if any such officer knowingly and willfully registers as a voter any person not entitled to be registered, or refuses to so register any person entitled to be registered; or if any such officer or other person who has any duty to perform in relation to such registration or election, in ascertaining, announcing, or declaring the result thereof, or in giving or making any certificate, document, or evidence in relation thereto, knowingly neglects or refuses to perform any duty required by law, or violates any duty imposed by law, or does any act unauthorized by law relating to or affecting such registration or election, or the result thereof, or any certificate, document, or evidence in relation thereto, or if any person aids, counsels, procures, or advises any such voter, person, or officer to

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each House of Congress shall be the judge of the elections, returns, and qualifications of its own members, commented on.

The offense created by such twentieth section being a misdemeanor, it is sufficient, in an indictment, to describe it in the words of the statute, adapted to the particular circumstances involved in the offense charged. The averments, in the indictment in this case, as to the existence and action of the board of inspectors of registry, upheld as sufficient, on demurrer, the court taking judicial notice of the statutes of New York in respect to such board, such statutes being referred to in the indictment.

No suggestion being made to the court that the defendant had any defense to the indictment, judgment absolute was rendered against him, on the overruling of a demurrer to the indictment. United States *v.* Quinn, 8 Blatch. 48.

(*c.*) An indictment will not lie, in a United States court in New York, against a person for having fraudulently registered at a registry of voters in New York, for an election for representatives in Congress, when he was disqualified as a voter by reason of having been convicted of a felony, where the conviction set forth is for having committed the offense created by section 5431, Revised Statutes, of having uttered a counterfeit security of the United States, because the laws of the State of New York do not deprive a person who has been convicted of such offense of the right of suffrage. United States *v.* Barnabo, 14 Blatch. 74.

do any act hereby made a crime, or to omit any act the omission of which is hereby made a crime, every such person shall be punishable as prescribed in the preceding section. [Feb. 28, 1871, chap. 99, § 1, v. 16, p. 434; May 31, 1870, ch. 114, § 20, v. 16, p. 145.]

8. [§ 5513.] Every registration made under the laws of any State or Territory, for any State or other election at which such representative or delegate in Congress may be chosen, shall be deemed to be a registration within the meaning of the preceding section, notwithstanding such registration is also made for the purposes of any State, Territorial, or municipal election.[1] [Feb. 28, 1871, ch. 99, § 1, v. 16, p. 433.]

9. [§ 5514.] Whenever the laws of any State or Territory require the name of a candidate or person to be voted for as representative or delegate in Congress shall be printed, written, or contained on any ticket or ballot with the names of other candidates or persons to be voted for at the same election as State, territorial, municipal, or local officers, it shall be deemed sufficient *prima facie* evidence to convict any person charged with voting, or offering to vote, unlawfully, under the provisions of this chapter, to prove that the person so charged cast or offered to cast such a ticket or ballot whereon the name of such representative or delegate might by law be printed, written, or contained, or that the person so charged committed any of the offenses denounced in this chapter with reference to such ticket or ballot. [31 May, 1870, ch. 114, § 21, v. 16, p. 145.]

10. [§ 5515.] Every officer[2] of an election at which any representative or delegate in Congress is voted for, whether such officer

[1] The foregoing provision is constitutional. United States *v.* Quinn, 8 Blatch. 48; see note (par. *b.*) to preceding section.

[2] The governor of a state is not "an officer of election" within the meaning of section 22 of the act of May 31, 1870, which makes it criminal for any "*election* officer" fraudulently to make any false certificate of the result of any congressional election. U. S. *v.* Clayton, 2 Dillon, 219; 19 Am. Law Rep. 737; 10 Am. Law Reg. (N. S.) 737.

Rules by which courts arrive at the intention of the legislature in construing criminal statutes stated and applied. Statutes creating crimes will not be extended by judicial interpretation to cases not plainly and unmistakably within their terms. In statutes creating and defining criminal offenses, the courts will not, by construction, ingraft words in one section upon those of another, unless the legislative intention be plain and clear. Ib.

The relations of a State to the general government, and of the governor to both, referred to as showing the improbability that Congress would (if its

of election be appointed or created by or under any law or authority of the United States, or by or under any State, Territorial, district, or municipal law or authority, who neglects or refuses to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory thereof; or who violates any duty so imposed; or who knowingly does any acts thereby unauthorized, with intent to affect any such election, or the result thereof; or who fraudulently makes any false certificate of the result of such election in regard to such representative or delegate;[2] or who withholds, conceals, or destroys any certificate of record so required by law respecting the election of any such

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power be conceded) provide for the trial and imprisonment of this officer for omitting or fraudulently performing election duties prescribed by *State* laws. Ib.

[1](*a.*) It is within the constitutional power of Congress, in providing for the election of its members, to declare any willful refusal or neglect on the part of a State officer to perform the duties imposed by State laws as to such elections, a crime punishable by indictment in the federal courts. U. S. *v.* Clarke (U. S. Circuit Court, Southern District of Ohio, Baxter, J.), 4 Cin. Law. Bull. 49.

Commonwealth of Kentucky *v.* Dennison, Governor, 24 How. 66, distinguished. Ib.

On a motion to quash an indictment, under section 5515, against a judge of an election at which representatives in Congress were voted for, appointed by the State authorities, for unlawfully neglecting to perform certain duties enjoined on him as such judge by the laws of Ohio: *Held*, that the passage of such law is a proper exercise of the power of Congress, and constitutional. Ib.

[This case has since been decided by the United States Supreme Court on *habeas corpus*. See appendix.]

(*b.*) When State laws have imposed duties upon persons, whether officers or not, the performance or non-performance of which affects rights under the federal government, Congress may make the non-performance of those duties an offense against the United States, and may punish it accordingly. U. S. *v.* Given (U. S. Circuit Court, District of Delaware, Strong and Bradford, J. J.), 17 Int. Rev. Rec. 189, 195.

[2]The revised statutes of New York prescribe that the ballots in certain specified boxes shall be canvassed in a particular order. A failure by the inspectors to canvass in that order, in the absence of a guilty or improper motive, is not a criminal offense. U. S. *v.* Hayden, 52 How. (N. Y.) Pr. 471.

To warrant a conviction of an inspector of election, chosen under any State law, for making a false certificate of the result of the canvass for representative in Congress, there must be proof that the certificate was made by such inspector fraudulently. The fact that a fraud upon the ballot-box was committed by some unknown person, no agency of the inspector being shown, is not sufficient to warrant a conviction under section 5515, R. S. Ib.

It is not a criminal neglect of duty for an inspector of election to deliver the keys of a ballot-box, on the morning of election, to a policeman assigned by

representative or delegate; or neglects or refuses to make and return such certificate as required by law; or who aids, counsels, procures, or advises any voter, person, or officer to do any act by this or any of the preceding sections made a crime, or to omit to do any duty the omission of which is by this or any of such sections made a crime, or attempts to do so, shall be punished as prescribed in section fifty-five hundred and eleven.[1] [Ib. § 22.]

11. [§ 5516.] Every person who willfully obstructs, hinders, or prevents any officer or other person charged with the execution of any warrant or process issued under the provisions of sections nineteen hundred and eighty-four and nineteen hundred and eighty-five, Title "Civil Rights," or any person lawfully assisting him, from arresting any person for whose apprehension such warrant or process may have been issued; or rescues or attempts to rescue such person from the custody of the officer or other person lawfully assisting when so arrested, pursuant to the authority herein given; or aids, abets, or assists any person so arrested, directly or indirectly, to escape from the custody of the officer or other person legally authorized to arrest the party; or harbors or conceals any person for whose arrest a warrant or process has been issued, so as to prevent his discovery and arrest, after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for any of such offenses, be subject to a fine of not more than one thousand dollars, or imprisonment not more than six months, or both. [31 May, 1870, ch. 114, § 11, v. 16, p. 142.]

12. [§ 5517.] Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of section nineteen hundred and eighty-five, Title "Civil Rights," or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of one thousand dollars, for the benefit of the party aggrieved thereby. [Ib. § 10.]

13. [§ 5518.] If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof;

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the city authorities to do duty at the poll on election day, where this is proven to have been the custom in the city in which the election was held, and where it is under the apparent sanction, though not strict construction, of the police law of the city. Ib.

[1] See pars. 7, 15–19, 21, 25, 26, chap. 2, *supra*.

or to induce by like means any officer of the United States to leave any State, district, or place where his duties as officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property, so as to molest, interrupt, hinder, or impede him in the discharge of his official duties; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [July 31, 1861, chap. 33, v. 12, p. 284; April 20, 1871, chap. 22, § 2, v. 17, p. 13.]

14. [§ 5519.] If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [April 20, 1871, chap. 22, § 2, v. 17, pp. 13, 14.]

15. [§ 5520.] If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any citizen who is lawfully entitled to vote from giving his support or advocacy, in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for president or vice-president,[1] or as a member of the Congress of the United States;[2] or to injure any citizen in person or property on account of such support or advocacy; each of such persons shall be punished by a fine of not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, not less than six months nor more than six years, or by both such fine and imprisonment. [Ib.]

16. [§ 5521.] If any person be appointed a supervisor of election or a special deputy marshal under the provisions of Title "The

[1] See chap. 8.
[2] See chap. 10.

Elective Franchise," and has taken the oath of office as such supervisor of election or such special deputy marshal, and thereafter neglects or refuses, without good and lawful excuse, to perform and discharge fully the duties, obligations, and requirements of such office until the expiration of the term for which he was appointed, he shall not only be subject to removal from office with loss of all pay or emoluments, but shall be punished by imprisonment for not less than six months nor more than one year, or by a fine of not less than two hundred dollars and not more than five hundred dollars, or by both fine and imprisonment, and shall pay the costs of prosecution.[1] [Feb. 28, 1871, chap. 99, § 11, v. 16, p. 437.]

17. [§ 5522.] Every person, whether with or without any authority, power, or process, or pretended authority, power, or process, of any State, Territory, or municipality, who obstructs, hinders, assaults, or by bribery, solicitation, or otherwise, interferes with or prevents the supervisors of elections, or either of them, or the marshal or his general or special deputies, or either of them, in the performance of any duty required of them, or either of them, or which he or they, or either of them, may be authorized to perform by any law of the United States, in the execution of process or otherwise, or who by any of the means before mentioned hinders or prevents the free attendance and presence at such places of registration or at such polls of election, or full and free access and egress to and from any such place of registration or poll of election, or in going to and from any such place of registration or poll of election, or to and from any room where any such registration or election or canvass of votes, or of making any returns or certificates thereof, may be had, or who molests, interferes with, removes, or ejects from any such place of registration or poll of election, or of canvassing votes cast thereat, or of making returns or certificates thereof, any supervisor of election, the marshal or his general or special deputies, or either of them, or who threatens, or attempts, or offers so to do, or who refuses or neglects to aid and assist any supervisor of election, or the marshal, or his general or special deputies, or either of them, in the performance of his or their duties, when required by him or them, or either of them, to give such aid and assistance, shall be liable to instant arrest without process, and shall be punished by imprisonment not more than two years, or by a fine of not more than three thousand dollars, or

[1] See pars. 10–30, chap. 2, *supra*, and Ex parte Siebold, appendix.

by both such fine and imprisonment, and shall pay the cost of the prosecution.[1] [Ib. § 10, p. 436.]

18. [§ 5523.] Every person who, during the progress of any verification of any list of persons who may have registered or voted, which is had or made under any of the provisions of title "The Elective Franchise," refuses to answer, or refrains from answering, or, answering, knowingly gives false information in respect to any inquiry lawfully made, shall be punishable by imprisonment for not more than thirty days, and by a fine of not more than one hundred dollars, or by both, and shall pay the costs of the prosecution.[2] [Ib.]

19. [§ 5528.] Every officer of the army or navy, or other person in the civil, military, or naval service of the United States, who orders, brings, keeps, or has under his authority and control, any troops or armed men at any place where a general or special election is held in any State, unless such force be necessary to repel armed enemies of the United States, or to keep peace at the polls, shall be fined not more than five thousand dollars, and suffer imprisonment at hard labor not less than three months nor more than five years.[3] [Feb. 25, 1865, ch. 52, § 1, v. 13, p. 437.]

20. [§ 5529.] Every officer or other person in the military or naval service, who, by force, threat, intimidation, order, advice, or otherwise, prevents, or attempts to prevent, any qualified voter of any State from freely exercising the right of suffrage at any general or special election in such State, shall be fined not more than five thousand dollars, and imprisoned at hard labor not more than five years.[4] [Ib. § 2.]

21. [§ 5530.] Every officer of the army or navy who prescribes or fixes, or attempts to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any State, shall be punished as provided in the preceding section.[5] [Ib. § 1.]

22. [§ 5531.] Every officer or other person in the military or naval service who, by force, threat, intimidation, order, or otherwise, compels, or attempts to compel, any officer holding an election in any State to receive a vote from a person not legally quali-

[1] See pars. 15–19, 25, 26, chap. 2, *supra*; see note to par. 17, chap. 2, *supra*.

[2] See pars. 15–17, 25, chap. 2, *supra*.

[3] See par. 1, chap. 2, *supra*.

[4] See pars. 1, 2, chap. 2, *supra*.

[5] See par. 2, chap. 2, *supra*.

fied to vote, or who imposes, or attempts to impose, any regulations for conducting any general or special election in a State different from those prescribed by law, or who interferes in any manner with any officer of an election in the discharge of his duty, shall be punished as provided in section fifty-five hundred and twenty-nine.[1] [Ib. § 2.]

23. [§ 5532.] Every person convicted of any of the offenses specified in the five preceding sections shall, in addition to the punishments therein severally prescribed, be disqualified from holding any office of honor, profit, or trust under the United States; but nothing in those sections shall be construed to prevent any officer, soldier, sailor, or marine from exercising the right of suffrage in any election district to which he may belong, if otherwise qualified according to the laws of the State in which he offers to vote. [Ib. §§ 1, 2.]

[1] See pars. 1, 2, chap. 2, *supra*.

CHAPTER V.

CITIZENSHIP.[1]

[Title XXV., United States Revised Statutes.]

1 Who are citizens.
2 Citizenship of children of citizens born abroad.
3. Citizenship of married women.
4. Of persons born in Oregon.
5. Rights of citizens forfeited for desertion, etc.
6. Certain soldiers and sailors not to incur the forfeitures of the last section.
7. Avoiding the draft.
8. Right of expatriation declared.
9. Protection to naturalized citizens in foreign States.
10. Release of citizens imprisoned by foreign governments to be demanded.

1. [§ 1992.] All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.[2] [9 April, 1866, ch. 31, § 1, v. 14, p. 27.]

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[1] An American citizen may acquire, in a foreign country, the commercial privileges of a domicile; and if he, by his own act, becomes a subject of the foreign power, he is thereby placed out of the protection of the United States while in the foreign country, although he may not thereby be protected from punishment for crimes committed against the United States. Murry *v.* Charming Betsey, 2 Cranch, 120.

See note to par. 3, chap. 4; and notes to chap. 6.

[2] (*a.*) A citizen of the United States owes his first and highest allegiance to the general government, and to the State of which he may be a citizen.

A citizen of one of the late insurgent States, who adhered to the cause of the United States, and retired within the federal lines, and remained there during the rebellion, continued to be a citizen of the United States, notwithstanding the secession and belligerency of his own State, and notwithstanding his purpose to return to that State after hostilities might cease. The Planters' Bank *v.* St. John, 1 Woods, 585.

(*b.*) A child born in the United States, of alien parents, during its mother's temporary sojourn, is a native born citizen. Munro *v.* Merchant, 26 Barb. (N. Y.), 383.

(*c.*) By the common law a child born within the allegiance of the United States is born a subject thereof, without reference to the political status or condition of its parents. McKay *v.* Campbell, 2 Sawyer, 118.

The Indian tribes within the territory of the United States are independent political communities, and a child of a member thereof, though born within

2. [§ 1993.] All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States;[1] but the rights of citi-

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the limits of the United States, is not a citizen thereof, because not born subject to its jurisdiction. Ib.

The laws bearing upon the citizenship of persons born in Oregon, between 1818 and 1846, explained and applied. Ib.

(*d.*) Domicile in a foreign country does not affect the fact of citizenship, nor work a forfeiture of political rights. Brown *v.* U. S., 5 Ct. of Cl. 571.

(*e.*) The law presumes all persons who reside here to be citizens of the United States, until the contrary appears. State *v.* Beackmo, 6 Blackf. (Ind.) 488.

(*f.*) When citizenship presumed. Lasportas *v.* De la Motta, 10 Rich. (S. C.) Eq. 38; Nalle *v.* Fenwick, 4 Rand. (Va.) 585; Blight *v.* Rochester, 7 Wheat. 535.

(*g.*) As to status of residents before and during the Revolutionary War. Inglis *v.* Sailor's Snug Harbor, 3 Pet. 99; Shanks *v.* Dupont, Ib. 242; Blight *v.* Rochester, 7 Wheat. 544; McIlvaine *v.* Coxe, 4 Cranch, 209; Calais *v.* Marshfield, 30 Me. 511.

(*h.*) As to residents of Louisiana before cession to United States. Re Harrold, 1 Penn. Law Jour. 214.

(*i.*) When a Territory is conquered, only the allegiance of the people is changed; their relation to each other and their rights of person and property remain undisturbed. Leitensdorfer *v.* Webb, 20 How. 176; U. S. *v.* Percheman, 7 Peters, 51; Tobin *v.* Walkinshaw, McAll. 186.

See note to par. 3, chap. 4, *supra.*

[1] (*a.*) By virtue of the act of February 10, 1855, chap. 71, although a person was born out of the jurisdiction of the United States, he is a citizen thereof, if at the time of his birth, his father was a citizen of the United States. Oldham *v.* Bangor, 58 Me. 353.

(*b.*) The citizenship of the child is determined by that of the father; and, though the latter reside in another country, the child will be a citizen of this, if the father has not forfeited or surrendered his allegiance thereto. State *v.* Adams, 45 Iowa, 99.

(*c.*) An individual whose father appears to have been a resident in this country, and to have married and had children born here, is presumed to be a citizen, although he himself was born subsequently to his father's removal to a foreign country, there being nothing else to show his father to have been an alien. Campbell *v.* Wallace, 12 N. H. 362.

(*d.*) Where a father has been a citizen of the United States, his son is entitled to the privileges of citizenship, though born without the limits of the United States. Davis *v.* Hall, 1 Nott. & M. (S. C.), 292.

Otherwise where the *mother* is a *citizen*, and the *father* an *alien*. Ib.

(*e.*) Under the acts of Congress, children born abroad, not only of citizens by birth, but also naturalized citizens, are citizens of the United States. Lasportas *v.* De La Motta, 10 Rich. (S. C.) Eq. 38.

zenship shall not descend to children whose fathers never resided in the United States. [14 April, 1802, ch. 28, § 4, v. 2, p. 155; 10 Feb., 1855, ch. 71, § 1, v. 10, p. 604.]

3. [§ 1994.] Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.[1] [10 Feb., 1855, ch. 71, § 2, v. 10, p. 604.]

(*f.*) Under the New York Statute, 1778, abrogating all statutes of England on this subject, and, under the laws of the United States, the citizenship of all children of Americans born abroad, between 1802 and 1855, depends exclusively upon the dormant principles of the common law. Ludlam *v.* Ludlam, 31 Barb. 486.

The universal maxim of the common law, being *partus sequitur patrem*, it is sufficient for the application of this doctrine, that the father should be a subject, lawfully and without breach of his allegiance beyond sea, no matter what may be the condition of the mother. In accordance with the above principle: *Held*, That the defendant, the son of an American citizen by an alien mother, born in a foreign country, while his father was temporarily resident there, was a citizen of the United States, and entitled to inherit here. The greater or less duration of the father's residence abroad was not material, so long as it was, in intention and in fact, temporary and not perpetual. Ib.

(*g.*) One who was born in Canada of parents of African blood, born in Virginia, and held there as slaves until they emigrated to Canada, does not, by removing to the United States, become a citizen. The case of such a person is not covered either by the fourteenth and fifteenth amendments, or by the act of April 14, 1802. Hedgman *v.* B'd Registration of Detroit, 26 Mich. 51.

[1] (*a.*) The act of Congress, of February 10, 1855, which declares "that any woman, who might lawfully be naturalized under the existing laws, married, or who shall be married, to a citizen of the United States, shall be deemed and taken to be a citizen," confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide.

The terms, "married," or "who shall be married," in the act, do not refer to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who, under previous acts, might be naturalized, is in a state of marriage to a citizen, she becomes, by that fact, a citizen also. His citizenship, whenever it exists, confers citizenship upon her.

The object of the act was to allow the citizenship of the wife to follow that of her husband, without the necessity of any application for naturalization on her part.

The terms, "who might lawfully be naturalized under the existing laws," only limit the application of the law to free white women, Kelly *v.* Owen, 7 Wall. 496.

(*b.*) The alien widow of a naturalized citizen of the United States, although she never resided within the United States during the lifetime of her husband,

4. [§ 1995.] All persons born in the district of country formerly known as the Territory of Oregon,[1] and subject to the jurisdiction of the United States on the 18th of May, 1872, are citizens in the same manner as if born elsewhere in the United States. [18 May, 1872, ch. 172, § 3, v. 17, p. 134.]

5. [§ 1996.] All persons who deserted the military or naval service of the United States, and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the president, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.[2] [3 Mar., 1865, ch. 79, § 21, v. 13, p. 490.]

6. [§ 1997.] No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the army or navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may

is a citizen of the United States. Burton *v.* Burton, 38 N. Y. (1 Keyes) 359; Kane *v.* McCarthy, 63 N. C. 299.

(*c.*) An alien woman who has intermarried with a citizen of the United States, residing abroad—the marriage having been solemnized abroad, and the parties after the marriage continuing to reside abroad—is to be regarded as a citizen of the United States, within the meaning of the act of February 10, 1855, § 2, though she may never have resided in the United States. 14 Op. Att'y Gen. 402.

[1] See last part of par. (*c*) of note to par. 1, this chap.

[2] (*a.*) The provision of the act of Congress of 1865, chap. 79, § 21, which deprives deserters from the military service of the United States of the rights of citizens thereof, only applies to those duly convicted as deserters by a court of competent jurisdiction; and if it authorizes the rejection of the vote of a person thus convicted, it can only be upon proof, by duly authenticated record of the conviction. He can not be required to answer any questions in reference thereto. Goetscheus *v.* Matthewson, 61 N. Y. 420, reversing *s. c.* 5 Lans. 214. See *s. c.* 58 Barb. 152; 40 How. (N. Y.) Pr. 97.

(*b.*) An act of Congress (3 March, 1865, § 21), providing that, in addition to other penalties for desertion from the military or naval service of the United States, there shall also be a forfeiture of the rights of citizenship is constitutional. It is not an *ex post facto* law; neither is it a bill of attainder, for the reason that it contemplates a trial by a court martial to enforce this penalty, together with the other penalties for desertion. Goetscheus *v.* Matthewson, 58 Barb. (N. Y.), 152; 40 How. (N. Y.) Pr. 97. See *s. c.* 61 N. Y. 420.

have incurred, under the preceding section, by the loss of citizenship and the right to hold office in consequence of his desertion. [19 July, 1867, chap. 28, v. 15, p. 14.]

7. [§ 1998.] Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteeen hundred and ninety-six. [3 Mar., 1865, chap. 79, § 21, v. 13, p. 490.]

8. [§ 1999.] Whereas, the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign States, owing allegiance to the governments thereof; and whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore, any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic.[1] [27 July, 1868, chap. 249, § 1, v. 15, p. 223.]

[1] (*a.*) In this country, expatriation is conceded to be a fundamental right. As far as the principles maintained and the practice adopted by the government of the United States are evidence of its existence, it is fully recognized. It is constantly exercised, and has never in any way been restrained. The general evidence of expatriation is actual emigration, with other concurrent acts showing a determination and intention to transfer allegiance. Stoughton *v.* Taylor, 2 Paine, 655, 661.

(*b.*) Proof that a person appointed consul to a foreign port declared before he left this country that he intended to resign his consulate and settle in the foreign country, is not sufficient evidence of expatriation. Wooldridge *v.* Wilkins, 3 How. (Miss.) 360.

(*c.*) Removal from the country and residence under another government for a period of years does not deprive one of his citizenship in this country. Nor does involuntary military service in a foreign army by a citizen of this country, and the acceptance of a bounty therefor, have the effect to deprive him of his citizenship. State *v.* Adams, 45 Iowa, 99.

(*d.*) Even if an American citizen can, without any legislative act to this effect, throw off his allegiance to his native country, it is perfectly clear that

9. [§ 2000.] All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this government the same protection of persons and property which is accorded to native-born citizens. [27 July, 1868, chap. 249, § 2, v. 15, p. 224.]

10. [§ 2001.] Whenever it is made known to the president that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the president forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the president shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the president shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall, as soon as practicable, be communicated by the president to Congress. [Ib. § 3.]

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this can not be done without a *bona fide* change of domicile. Santissima Trinidad, 7 Wheat. 283, 347, 348; Fish *v.* Stoughton, 2 Johns. (N. Y.) Cas. 407.

(*e.*) Becoming an adopted citizen of a foreign government does not work a forfeiture of any rights vested in one by law, while a citizen of the United States, though he afterward leaves this country, and takes an oath of allegiance to foreign government with intent and effect to expatriate himself. Wynn *v.* Morris, 16 Ark. 414, 436.

(*f.*) The right of a citizen of the United States to renounce his citizenship, what acts of his will indicate his exercise of the right of expatriation, effect of such acts upon the citizenship of his children born abroad, and the obligations of the government toward citizens domiciled in foreign countries, who apparently have no intention of returning—considered. Expatriation, 14 Op. Att'y Gen. 295.

(*g.*) The general doctrine is, that no person can, by any act of his own, without the consent of the government, put off his allegiance and become an alien. Shanks *v.* Dupont, 3 Pet. 246.

(*h.*) The right of expatriation. Inglis *v.* Sailors, etc., 3 Pet. 99; Murray *v.* Schooner, 2 Cranch, 120; Bessell *v.* Briggs, 9 Mass. 461; Jackson *v.* Burns, 3 Binn. (Penn.) 85.

(*i.*) Further as to what will be sufficient evidence of expatriation. The Venus, 8 Cranch, 279; White *v.* Burnley, 20 How. 235; The Frances, 8 Cranch, 235; Brown *v.* U. S., 5 Ct. of Cl. 571.

CHAPTER VI.

NATURALIZATION.[1]

[Title XXX, United States Revised Statutes.]

1–8. Aliens, how naturalized.
9. Aliens honorably discharged from the military service.
10. Minor residents.
11. Widow and children of declarants.
12. Aliens of African nativity and descent.
13. Residence of five years in United States.
14. Alien enemies not admitted.
15. Children of persons naturalized under certain laws to be citizens.
16. Police Court of District of Columbia has no power to naturalize foreigners.
17. Naturalization of seamen.

1. [§ 2165.] An alien may be admitted to become[2] a citizen of the United States in the following manner, and not otherwise:

2. *First.* He shall declare on oath,[3] before a Circuit or

[1] For the provision of the Constitution giving Congress power to legislate on this subject, see par. 25, chap. 1. For Crimes, see chap. 7.

(*a.*) The power of naturalization is exclusively in Congress. Chirac *v.* Chirac, 2 Wheat. 259; see Thurlow *v.* Massachusetts, 5 How. 585, 586; Collett *v.* Collett, 2 Dall. 294; Weaver *v.* Fegely, 29 Penn. St. 27; Lynch *v.* Clarke, 1 1 Sand (N. Y.), Ch. 583.

(*b.*) A naturalized citizen becomes a member of society, possessing all the rights of a native citizen, and standing, in view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national legislature is, to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual. He is distinguishable in nothing from a native citizen, except so far as the Constitution makes the distinction. *Arguendo.* Osborne *v.* U. S. Bank, 9 Wheat. 827, 828.

(*c.*) Naturalization is a judicial act; for it is a cause to be heard and decided on evidence, and involves a question of legal right. Rump *v.* Commonwealth, 30 Penn. St. 475; Ex parte Knowles, 5 Cal. 300; Re Clark, 18 Barb. (N. Y.) 444.

(*d.*) The various acts upon the subject of naturalization submit the decision on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. The judgment, if entered on record in legal form, closes all inquiry as to the testimony on which it has been pronounced, and, like every other judg-

[2] Where there is no proof that an alien has become a citizen, his original citizenship is presumed to continue. The Reporter, vol. IX., page 265.

[3] "Oath" includes an affirmation. United States Revised Statutes, § 1

District Court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having

ment, is complete evidence of its own validity. Spratt *v.* Spratt, 4 Pet. 393, 407, 408.

(*e.*) The order of a court of competent jurisdiction, admitting an alien to citizenship, is in the nature of a judgment, and, in the absence of fraud, is conclusive as to the question of the requisite length of residence of the naturalized citizen of the United States. The Acorn, 2 Abbott, U. S., 434.

(*f.*) A record of naturalization, made by a court of competent jurisdiction, can not be impeached in a collateral proceeding, by showing by parol that the preliminary steps required by law had not in fact been taken. People *v.* McGowan, 77 Ill. 644; S. P. Scott *v.* Strobach, 13 Am. Law Reg. (N. S.) 461; State *v.* Penney, 10 Ark. 621. See also Commonwealth *v.* Leary, 1 Brews. 270.

(*g.*) On a question of title, the court may inquire into the regularity of alien's proceeding in obtaining a certificate of citizenship. Vaux *v.* Nesbitt, 1 McCord (S. C.) Ch. 370.

(*h.*) Under the naturalization act of January 29, 1795 (1 Statutes at Large, 414), the administration of the oath of allegiance amounts to a judgment of the court for the admission of the applicant to the rights of a citizen, and implies that all prerequisites had been complied with. Campbell *v.* Gordon, 6 Cranch. 176; S. P. Towles' case, 5 Leigh (Va.), 743.

(*i.*) The judgment of a court of competent jurisdiction, admitting an alien to be a citizen, need not find the facts requisite by law to entitle the applicant to be so admitted. Stark *v.* The Chesapeake Ins. Co., 7 Cranch, 420; S. P. Ritchie *v.* Putnam, 13 Wend. (N. Y.), 524; McDaniel *v.* Richards, 1 McCord (S. C.), 187; Banks *v.* Walker, 3 Barb. Ch. 438; McCarthy *v.* Marsh, 5 N. Y. 263.

(*j.*) It is competent for a district court of a state to amend *nunc pro tunc* the record of naturalization proceedings had therein, so as to correct an error of the clerk and make the record conform to the truth. As the court had, under the laws of the United States, jurisdiction of the subject-matter, and as it affirmatively appears upon the face of the record that it had jurisdiction of the party, it imports absolute verity, and can not be questioned in a collateral proceeding. State ex rel. Brown *v.* McDonald (Sup. Court of Mich.), 1 N. W. Reporter, 133; 5 Cent. Law Jour. 227, 228.

(*k.*) State courts, in admitting aliens to citizenship under the naturalization laws, act as United States courts. The act of admission is in the nature of a judgment, of which the preliminary proofs, judges *allocatur*, and oath of allegiance, duly filed, are the record. Entry in a book is not necessary; and the omission to enter, or defect in entering the admission in the minute-book, may be cured *nunc pro tunc*. Re Christern, 43 N. Y. Superior Ct. 523.

(*l.*) Acts of Congress prescribing naturalization proceedings, reserved and explained at length, with special reference to whether voting on a certificate of naturalization, which was completely and duly made, but was defectively recorded, constitutes an unlawful and punishable use of the certificate. Ib.

(*m.*) By being naturalized, an alien becomes instantly a citizen of the United States, and of the State, and as such has a right to vote for county officers at

common-law jurisdiction and a seal and clerk,[1] two years, at least, prior to his admission, that it is *bona fide* his intention to become a

any election at which such officers are to be chosen, occurring after his naturalization, if he has the necessary qualifications as to residence, in the State and county. Wood *v.* Fitzgerald, 3 Oregon, 568; Morgan *v.* Dudley, 18 B. Mon. 693; Anon., 1 Brews. 158.

(*n.*) A certificate of naturalization in these words, namely: I, A. B., clerk, etc., hereby certify that at a superior court held at Savannah, etc., before X. Y., judge, etc., on a certain day, C. D., an alien, petitioned the court to be admitted a citizen, and, having in all things complied with the law in such cases, etc., the said C. D. was accordingly admitted a citizen of the United States, having first taken and subscribed in open court the oath of naturalization. Given under my hand and seal of the said court, etc.: *Held*, To be insufficient to show that C. D. was naturalized. Miller *v.* Reinhart, 18 Ga. 239.

(*o.*) A rule to vacate a decree of naturalization will not be granted at the instance of a private citizen in the courts of Pennsylvania. The attorney-general must be a party. State *v.* Paper, 1 Brews. (Penn.) 263.

The seal of the court is conclusive as to the naturalization, unless the certificate has been obtained by falsehood or fraud. Ib.; also, 2 Ib. 130.

(*p.*) One who has been improperly naturalized may surrender his certificate and present a new petition. State *v.* Paper, 1 Brews. (Penn.) 263.

(*q.*) A State can not make a subject of a foreign government a citizen of the United States. This can only be done by the naturalization laws of Congress. Lanz *v.* Randall, 4 Dill. 425; Re Wehlitz, 16 Wis. 443. See note, par (*f.*), p. 7.

(*r*) The naturalization act of April 14, 1802, did not require the time of arrival in the United States to be proved by the certificate of the report of the alien to a court; other evidence thereof was admissible, and the decree of naturalization was not required to notice the certificate. The act of March 22, 1816, which requires the certificate to be recited in the decree, is not in explanation, but in alteration, of the law of 1802. Spratt *v.* Spratt, 4 Peters, 393.

(*s.*) Naturalization relates back, and confirms the title to land *purchased* during alienage. Sutliff *v.* Forgey, 1 Cow. (N. Y.) 89.

(*t.*) But it does not retrospectively confirm a title claimed by *descent*. Vaux *v.* Nesbitt, 1 McCord (S. C.) 370; Heney *v.* Brooklyn Ben. So., 39 N. Y. 333.

(*u.*) In what cases naturalization confers upon aliens the right to sue in the Court of Claims, notwithstanding the disability imposed by act of July 27, 1868, determined. 4 Court of Claims, 395; Ib. 471; Ib. 529.

(*v.*) The States may prohibit their courts from naturalizing aliens. Stephens' case, 4 Gray, 559; Beavin's case, 33 N. H. 89.

See also note 1, p. 57; last note, p. 159; and notes to chap. 5.

[1] (*a.*) Or before a clerk of any of the courts named in this section. See p. 55.

(*b.*) The courts authorized by the act of Congress to admit aliens to citizenship need not possess general common law jurisdiction over all classes of actions, but must be courts of record for all purposes, possessing powers incident to such courts, with common-law jurisdiction over all subjects upon which they have authority to adjudicate, and must exercise their powers according to the course of the common law. People *v.* McGowan, 77 Ill. 644.

citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.[1] [April 14, 1802, chap. 28, §§ 1, 3, v. 2, pp. 153, 155; May 26, 1824, chap. 186, § 4, v. 4, p. 69.]

(*c.*) The Criminal Court of St. Louis, being a court of record, having common-law jurisdiction of a certain class of cases, a seal, and a clerk, has jurisdiction, under the acts of Congress, to admit aliens to citizenship. People *v.* McGowan, 77 Ill. 644.

(*d.*) It is provided by section 2165 of the Revised Statutes, that an alien may be admitted to be a citizen of the United States by "a court of record of any of the States, having common-law jurisdiction and a seal and clerk." A city court, which is a court of record and has a seal and a clerk, and has conferred upon it by a statute of New York, all the power and jurisdiction of justices of the peace, and all jurisdiction and power, within the city, of the Marine Court in the city of New York, and whose judge is clothed with all the powers of a county judge, and of a judge of the Supreme Court of the State at chambers, and which has civil jurisdiction in all actions for the recovery of money, when the amount recovered does not exceed $1,000, is a court having common-law jurisdiction, within the meaning of said section 2165. United States *v.* Power, 14 Blatch. 223.

(*e.*) The following courts have been held to be "courts of record . . . having common-law jurisdiction, within the meaning of section 2165:

The Police Court of Lowell (Ex parte Gladhill, 8 Met. 168); Police Court of Lynn (Ex-parte Cregg, 2 Curtiss, 98); Police Court of Nashua (State *v.* Whittemore, 50 N. H. 245); County Courts of Cal. (In re Connor, 39 Cal. 98); Probate Courts of Ohio (Anonymous, 2 W. L. G. 278; Ex-parte Wingard, 1 W. L. M.; 4 W. L. G. 169); County Courts of Ill. (Dale *v.* Irwin, 78 Ill. 170, overruling Board, etc., *v.* Davis, 63 Ill. 405); Criminal Court of St. Louis, Mo. (People *v.* McGowan, 77 Ill. 644: County Courts of N. Y. (People *v.* Pease, 30 Barb. 588); Ib. of Texas (Ex-parte Burkhardt, 16 Tex. 470); Lexington (Ky.) City Court (Morgan *v.* Dudley, 18 B. Mon. 693); Court of Nisi Prius, Philadelphia, Pa. (1 Brews. 273, 383).

(*f.*) A court of record without any clerk or prothonotary, or other recording officer, distinct from the judge of such court, is not competent to receive an alien's preliminary declaration of his intention to become a citizen, or to naturalize an alien. Ex-parte Cregg, 2 Curtiss, 98; State *v.* Whittemore, 50 N. H. 245; State *v.* Webster, 7 Neb. 469; and see Mills *v.* McCabe, 44 Ills. 194.

[1] (*a.*) The preliminary declaration, by a foreigner, of his intention to become a citizen, does not deprive the courts of the United States of jurisdiction over a suit to which he is a party, as a suit against an alien; but his final renunciation of his foreign allegiance is necessary. Baird *v.* Byrne, 3 Wall., Jr., C. C. 1.

(*b.*) An alien enemy can not be permitted to make the declaration required by law preparatory to the naturalization of aliens. Ex-parte Newman, 2 Gall. 11.

(*c.*) The declaration of an alien of his intention to become a citizen of the United States, is not objectionable because the name of the sovereign, allegiance

3. *Second.* He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, and particularly, by name,[1] to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court. [April 14, 1802, chap. 28, § 1, v. 2, p. 153.]

4. *Third.* It shall be made to appear to the satisfaction of the court admitting such alien, that he has resided within the United States five years at least,[2] and within the State or Territory where such court is at the time held, one year at least,[3] and that, during that time, he has behaved as a man of good moral character,[4] attached

to whom he particularly renounces, is not stated. Ex-parte Smith, 8 Blackf. (Ind.) 395.

(*d.*) Where it is clearly inferable from a record of naturalization, that the alien had not, at least three years previous to the date thereof, declared, on oath, his intention to become a citizen of the United States, and to renounce all allegiance, etc., as required by the act of 1802, but that the court has mistaken the registry of the arrival of the alien in the United States for such declaration of intention, *it seems* that the naturalization is invalid. But if regular on its face, it is conclusive. Banks *v.* Walker, 3 Barb. (N. Y.) Ch. 438.

(*e.*) Receiving the preliminary application and oath of an alien to be naturalized, is a ministerial, rather than a judicial act, and may be done before a clerk of the court as well as the court itself. Butterworth's case, 1 Woodb. & M. 323.

[1] See par. (*c.*), of note 2, on p. 51.

[2] See par 13, this chap., and notes.

[3] (*a.*) It is not necessary, in a petition for naturalization, under the act of April 14, 1802, for the applicant to allege or prove that he has resided within the State or Territory where the application is made, during the year next preceding his application. But he must show, to the satisfaction of the court, that during the whole period of residence required by law, it has *bona fide* been his intention to become a citizen of the United States. Cummings' petition, 41 N. H. 270.

See Re Clark, 14 Barb. 444, note 1, on p. 53, to this paragraph.

See note, par. (*c*), to par. 13, this chapter, Re Bye, 2 Daly (N. Y.), 525, *infra*.

[4] *Good moral character.—Effect of pardon.*—An alien, to be entitled to admission to citizenship, must first prove that he has behaved as a man of good moral character during *all* the period of his residence in the United States. What constitutes good moral character may vary in some respects in different times and places, but a person who commits perjury does not behave as a man of good moral character, and is not therefore entitled to citizenship. A pardon is prospective and not retrospective in its operation, and while it absolves the offender from the guilt of his offense and relieves him from the legal disabili-

to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall, in no case, be allowed to prove his residence.[1]

5. *Fourth.* In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility, in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application is made, and his renunciation shall be recorded in the court.

6. *Fifth.* Any alien who was residing within the limits and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof, made to some one of the courts above specified, that he has resided two years at least within the jurisdiction of the United States, and one year at least, immediately preceding his application, within the State or Terri-

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ties consequent thereon, it does not obliterate or wipe out the fact of the commission of the crime, so that it can not be made to appear on an application to be admitted to citizenship. In re Spenser (U. S. Cir. Court, Dist. of Oregon, Deady, J.), 7 Cent. Law Jour. 84; 6 Reporter, 294; 18 Albany L. Jour. 153; 3 Law Bull. 1003. See note 1, p. 53, and note 1, p. 55.

[1] (*a.*) In proceedings instituted for naturalizing an alien, his residence can not be established by affidavit, but must be proved in court by the testimony of witnesses. Nor are affidavits admissible to establish the alien's good moral character, or his attachment to the principles of our government; though on these points his oath is admissible. But it seems that the oath of the alien should be corroborated by other evidence. Anon., 7 Hill (N. Y.) 137.

(*b.*) The powers conferred upon the courts to naturalize foreigners are judicial, and not ministerial or clerical, and therefore must be exercised by the court and not by the clerks, and require an examination into each case sufficient to satisfy the court of the following facts: 1. Five years continuous residence of the applicant within the United States, and one year of like residence within the State or Territory where the court to which the application is made, is held. 2. That the applicant during the five years has conducted himself as a person of good moral character. 3. That the applicant is in principle attached to and well disposed toward the Constitution of the United States. The practice of the clerk of the court to receive and pass upon all applications for naturalization, and grant certificates without consulting the court, is forbidden. Re Clark, 18 Barb. (N. Y.) 444.

(*c.*) An alien can not vouch for a person petitioning to be naturalized. State *v.* Paper, 1 Brews. (Penn.) 263.

But one citizen can vouch for a number of petitioners. Ib.

tory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that, during such term of two years, he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making, in the court, an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court shall be recorded by the clerk thereof.[1]

7. *Sixth.* Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become such;[2] but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in

[1] Where a British subject was duly naturalized in a State, before the adoption of the United States Constitution, and continued to reside there until that event, he became, by virtue thereof, a citizen of the United States. Teare *v.* White, 2 Law Rep. (N. C.), 112.

[2] (*a.*) An alien who has emigrated to the United States since June 18, 1812, and who was not a minor on his arrival, is not entitled to take the oath of naturalization on five year's residence, without having made the declaration of his intention to become a citizen, required by the act of May 26, 1824 (first condition), two years before his application to take the oath of naturalization. Re Brownlee, 9 Ark. 191.

the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise, the same shall not entitle him to be considered and deemed a citizen of the United States. [22 March, 1816, chap. 31, § 2, v. 3, p. 259; 24 May, 1828, chap. 116, § 2, v. 4, p. 310.]

8. *Be it enacted by the Senate and House of Bepresentatives of the United States of America, in Congress assembled,* That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk, are hereby declared as legal and valid, as if made before one of the courts named in said section. [Act of February 1, 1876, chap. 5, v. 19. p. 2.]

9. [§ 2166.] Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien, shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.[1] [17 July, 1862, chap. 200, § 21, v. 12, p. 597.]

[1] (*a.*) Satisfactory proof by a person applying to be naturalized, that he is of good moral character, that he has resided one year within the United States previous to the application, and that he is of the age of twenty-one years and upwards, that he was regularly enlisted in the United States navy, where he served as an enlisted man, and that he was honorably discharged from service, entitle him to naturalization, under the provisions of section 21 of the act of July 17, 1862. The provisions of the act embrace the army as well as the navy. Re Stewart, 7 Robt. (N. Y.) 635.

(*b.*) The phrase "armies of the United States," in the act of July 17, 1862, permitting an alien, who has enlisted in the armies of the United States to be naturalized without a previous declaration of intention, etc., does not include the marine corps. Re Bailey, 2 Sawyer, 200.

10. [§ 2167.] Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arrival at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority,[1] be admitted a citizen of the United States, without having made the declaration required in the first condition of section two thousand one hundred and sixty-five; but such alien shall make the declaration required therein,[2] at the time of his admission, and shall further declare on oath, and prove to the satisfaction of the court, that, for two years next preceding it has been his *bona fide* intention to become a citizen of the United States; and he shall, in all other respects, comply with the laws in regard to naturalization. [26 May, 1824, chap. 186, § 1, v. 4, p. 69.]

11. [§ 2168.] When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States,[3] and shall be entitled to all rights and privileges as such upon taking the oaths *proscribed*[4] by law.[5] [26 Mar., 1804, chap. 47, § 2, v. 2, p. 293.]

12. [§ 2169.] The provisions of this Title shall apply to aliens

[1] See note to par. 7, this chapter, *supra*.

[2] When an application to be admitted a citizen of the United States is made under the provision of section 2167 Rev. Stats., it is not necessary to have made or to make the declaration required in the first condition of section 2165. The provision of section 2167 requiring the applicant to make the declaration required in section 2165, at the time of his admission, has reference to the declaration required to be made at the time of admission—i. e., the declaration required by the second condition of section 2165. State ex rel. Brown *v.* McDonald (Sup. Court of Mich.), 1 N. W. Reporter, 133; 5 Cent. Law Jour. 227, 228.

[3] When a foreign subject, after residing here the proper time, declares his intention to become a citizen, but dies before he has been here long enough to receive his certificate of citizenship, his children, born abroad, who came here under seventeen years of age with him, on attaining twenty-one years of age, become citizens of the United States and of the State of Texas. Schrimpf *v.* Settegast, 38 Tex. 96.

[4] Error in the roll; should be *prescribed*. Foot-note, 2d ed. Rev. Stat., p. 380.

[5] See par. (*a*) of note to par. 14, this chapter, *infra*.

[being free white[1] persons, and to aliens][2] of African nativity and to persons of African descent.[3] [14 July, 1870, chap. 254, § 7, v. 16, p. 256.]

13. [§ 2170.] No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.[4] [3 Mar., 1813, chap. 42, § 12, v. 2, p. 811.]

14. [§ 2171.] No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war at the time of his application, shall be then admitted to become a citizen of the United States;[5] but per-

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[1] A native of China, of the Mongolian race, is not a "white person" within the meaning of section 2169, as amended in 1875, and, therefore, is not entitled to become a citizen of the United States. In re Ah Yup (U. S. Circuit Court, District of California, Sawyer, J.), 17 Albany Law Jour. 357, 385; 6 Cent. Law Jour. 387; 12 Am. Law Rev. 812. Also, *Charles Miller's Application*, (U. S. Circuit Ct., N. Y., July, 1879, *not yet published*).

See an able article on Naturalization, 18 Am. Law Reg., p. 593.

[2] By act of February 18, 1875, chap. 80, v. 18, p. 318.

[3] (*a.*) The act of 1802, chap. 28, does not exclude females from the rights of citizenship by naturalization. Brown *v.* Shilling, 9 Md. 74.

(*b.*) An alien *feme covert* may be naturalized without the concurrence of her husband. Pries *v.* Cummings, 16 Wend. (N. Y.) 617.

See, as to the naturalization of women, 3 Cent. Law Jour. 506.

[4] (*a.*) An alien who arrived in this country since the act of March 3, 1813, applied to become a citizen, and it appeared that, during the five years next preceding his application, he had been in Upper Canada, though for a few minutes only, and without any intention of changing his residence: *Held*, that he was not entitled to be naturalized. Ex parte Paul, 7 Hill (N. Y.) 56. See Ex parte Hawley, 1 Daly (N. Y.), 531.

(*b.*) Five years *continued* residence necessary. Ex parte Walton, 1 Cranch C. C. 186; Ex parte Sanderson, Ib. 219. But sailing occasionally during that time in American vessels does not prevent. Ex parte Pasqualt, Ib. 243.

(*c.*) A mariner of foreign birth, who, for five years previous to his application for citizenship, has been continuously and exclusively employed in American vessels, and for the last year of that term has shipped only in vessels belonging to the port of New York, is deemed a resident of the United States during the five years, and of New York for one year, unless it is shown that he has maintained his previous residence. Re Bye, 2 Daly (N. Y.) 525. See Ex parte Scott, 1 Ib. 534.

[5] (*a.*) The proviso in the act of April 14, 1802, which excludes from citizenship aliens whose country shall be, at the time of the application, at war with the United States, extends to the supplementary act of March, 1804 [§ 2168, *supra*], authorizing the naturalization of the widows and children of persons, who, having pursued the directions of the original act, may die before they have become naturalized. Therefore, the minor son of an alien who had made report of himself, conformably to the act, but who had died two years there-

sons resident within the United States or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall any thing herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien. [14 April, 1802, chap. 28, § 1, v. 2, p. 153; 13 July, 1813, chap. 36, v. 3, p. 53.]

15. [§ 2172.] The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the States under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof;[1] and the chil-

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after: *Held*, not to be admissible to the rights of citizenship, the country from which he emigrated being, at the time of the application of the son, at war with the United States. Ex parte Overington, 5 Binn. (Penn.) 371.

(*b.*) Nor can an alien enemy make the preliminary declaration of intention. Ex parte Newman, 2 Gall. 11. See par. (*b*) of note 2 to par 2, this chapter, *supra*.

[1] (*a.*) Under the act of April 14, 1802, a minor child of a father who was naturalized, became a citizen, though not then within the United States, provided she was resident therein at the time of the passage of the act. Campbell *v.* Gordon, 6 Cranch, 176.

(*b.*) Under the naturalization act of 1802, the infant children of aliens, though born out of the United States, if dwelling within the United States at the time of the naturalization of their parents, become citizens by such naturalization. And the provision of that act on this subject is prospective, so as to embrace the children of aliens naturalized after the passage of the act as well as the children of those who were naturalized before. West *v.* West, 8 Paige (N. Y.), Ch. 433; Re Morrison, 22 How. (N. Y.) Pr. 99; State *v.* Penny, 10 Ark. 621; O'Conner *v.* State, 9 Fla. 215.

Contra: The act is not prospective. Brown *v.* Shilling, 9 Md. 74.

(*c.*) *Illegitimate children.*—A foreign-born person, who was alleged to be illegitimate, came to this country as a member of the family of his reputed father, whose wife was the mother of the boy. The reputed father was naturalized while the alleged illegitimate child was an infant: *Held*, as the child was a member of his reputed father's family when his father was naturalized, and he an infant, that by virtue of the act of Congress he became naturalized, and

dren of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof;[1] but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed. [14 April, 1802, chap. 28, § 4, v. 2, p. 155.]

16. [§ 2173.] The Police Court of the District of Columbia shall have no power to naturalize foreigners. [17 June, 1870, chap. 133, § 5, v. 16, p. 154.]

17. [§ 2174.] Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States, for the purpose of manning and serving on board any merchant vessel of the United States, any thing to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such after the filing of his declaration of intention to become such citizen. [7 June, 1872, chap. 322, § 29, v. 17, p. 268.]

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that the question of his legitimacy would not be inquired into in a proceeding to contest an election. Dale *v.* Irwin, 78 Ill. 170.

(*d.*) *Ib.*—The act of 1802 does not apply to illegitimate children. 22 Md. 239.

(*e.*) Where a person of foreign birth, who was a minor when he came to this country, testified that he had never been naturalized, and did not know that his father had been: *Held*, that this afforded *prima facie* evidence that such person is not entitled to vote, notwithstanding he had voted. Beardstown *v.* Virginia, 76 Ill. 34.

(*f.*) A person claiming to vote by reason of his parent's naturalization, must produce to the election officers his father's certificate of naturalization; he is incompetent to prove it by his own oath. Price *v.* Barbour, 13 Leg. Int. 140.

[1] See note 1, page 43.

A certificate of naturalization establishes a *prima facie* right to vote; the election officers can not go behind it. Commonwealth *v.* Lee, 1 Brews. 273; do. *v.* Sheriff, 1 Brews. 183.

CHAPTER VII.

CRIMES RELATING TO NATURALIZATION.

[Title LXX.—Parts of Chapters 4, 5, U. S. Rev. Stat.]

1. Taking false oath in naturalization.
2. False personation, etc., in procuring naturalization.
3. Using false certificate of citizenship, etc.
4. Using false certificate, etc., as evidence of a right to vote.
5. Aiding or abetting violations of preceding sections.
6. Falsely claiming citizenship.
7. Provisions applicable to all courts of naturalization.

1. [§ 5395.] In all cases where any oath or affidavit is made or taken under or by virtue of any law relating to the naturalization of aliens, or in any proceedings under such laws, any person taking or making such oath or affidavit, who knowingly swears falsely, shall be punished by imprisonment not more than five years, nor less than one year, and by a fine of not more than one thousand dollars.[1] [14 July, 1870, chap. 254, § 1, v. 16, p. 254.]

[1] See chap. 6, *supra*.

The offense of false swearing in proceedings under the law for the naturalization of aliens, may be the subject of indictment under this section or section 5392, punishing perjury, which is as follows:

"§ 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed."

(*a.*) On an application to a State court for the naturalization of a foreigner, J. testified, as a witness, that he was well acquainted with the applicant. It appeared that he was a total stranger to the applicant, and volunteered as a witness: *Held*, That this was sufficient evidence to warrant a conviction of J. on an indictment for perjury under section 5392 of the revised statutes. U. S. *v.* Jones, 14 Blatch. 90.

(*b.*) An indictment for perjury, alleging the making of a false affidavit rela-

2. [§ 5424.] Every person applying to be admitted a citizen, or appearing as a witness for any such person, who knowingly personates any other person than himself, or falsely appears in the name of a deceased person, or in an assumed or fictitious name, or falsely makes, forges, or counterfeits any oath, notice, affidavit, certificate, order, record, signature, or other instrument, paper, or proceeding required or authorized by any law relating to or providing for the naturalization of aliens; or who utters, sells, disposes of, or uses as true or genuine, or for any unlawful purpose, any false, forged, ante-dated, or counterfeit oath, notice, certificate, order, record, signature, instrument, paper, or proceeding above specified; or sells or disposes of to any person other than the person for whom it was originally issued, any certificate of citizenship, or certificate showing any person to be admitted a citizen, shall be punished by imprisonment at hard labor not less than one year, nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.[1] [14 July, 1870, chap. 254, § 2, v. 16, p. 254.]

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tive to an application for naturalization thereafter to be made to the police court of N., and that the affiant, at the time of making the affidavit, was sworn as a witness in support of said application, is sufficient; and it is unnecessary to aver that such application was afterward made, or that the affidavit was used.

At the time when affidavits made out of court were universally received in courts of this State upon the hearing of applications for naturalization, the making of the false affidavit to be used on such a hearing constituted the crime of perjury. State *v.* Whittemore, 50 N. H. 245.

(*c.*) Perjury committed in a state court, relative to an application for naturalization under the laws of the United States, is indictable in the courts of the State as an offense against the State. That it may also be an offense against the Federal Government is no objection to the jurisdiction. If two relations are violated by the same act, each must have its remedy. State *v.* Whittemore, 50 N. H. 245; Rump *v.* Commonwealth, 30 Penn. St. 475. Contra: People *v.* Sweetman, 3 Parker's Crim. Law, 358.

[1] See chap. 6, *supra*.

When there are two acts of Congress on the same subject, and the latter act embraces all the provisions of the first, and also new provisions, and imposes different or additional penalties, the latter act operates, without any repealing clause, as a repeal of the first.

Accordingly, the thirteenth section of the act of Congress of 1813, "for the regulation of seamen on board the public and private vessels of the United States," which defined certain offenses against the naturalization laws, and prescribed their punishment, was held to be repealed by the act of Congress of 1870, "to amend the naturalization laws, and to punish crimes against the same, and for other purposes," which declared not only that the several acts

3. [§ 5425.] Every person who uses, or attempts to use, or aids, or assists, or participates in the use of any certificate of citizenship, knowing the same to be forged, or counterfeit, or ante-dated, or knowing the same to have been procured by fraud, or otherwise unlawfully obtained; or who, without lawful excuse, knowingly is possessed of any false, forged, ante-dated, or counterfeit certificate of citizenship purporting to have issued under the provisions of any law of the United States relating to naturalization, knowing such certificate to be false, forged, ante-dated, or counterfeit, with intent unlawfully to use the same; or obtains, accepts, or receives any certificate of citizenship known to such person to have been procured by fraud or by the use of any false name, or by means of any false statement made with intent to procure, or to aid in procuring, the issue of such certificate, or known to such person to be fraudulently altered or ante-dated; and every person who has been or may be admitted to be a citizen who, on oath or by affidavit, knowingly denies that he has been so admitted, with intent to evade or avoid any duty or liability imposed or required by law, shall be imprisoned at hard labor not less than one year nor more than five years, or be fined not less than three hundred dollars nor more than one thousand dollars, or both such punishments may be imposed.[1] [Ib.]

4. [§ 5426.] Every person who in any manner uses for the purpose of registering as a voter, or as evidence of a right to vote, or otherwise, unlawfully, any order, certificate of citizenship, or certificate, judgment, or exemplification, showing any person to be admitted to be a citizen, whether heretofore or hereafter issued or made, knowing that such order, or certificate, judgment, or exemplification has been unlawfully issued or made; and every person who unlawfully uses, or attempts to use, any such order or certifi-

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mentioned in the thirteenth section of the act of 1813 should constitute a felony, but that, also, a great number of other acts of a fraudulent character, in connection with the naturalization of aliens, should constitute a similar offense, and made the infliction of a larger punishment for each offense discretionary with the court.

By the repeal of an act, without any reservation of its penalties, all criminal proceedings taken under it fall. There can be no legal conviction, nor any valid judgment pronounced upon conviction, unless the law creating the offense be, at the time, in existence. U. S. *v.* Tynen, 11 Wall. 88.

[1] See chap. 6, *supra*.

See note to preceding paragraph.

See note, par. (*l*), to chap. 6, "Naturalization," Re Christern, 48 N. Y. Superior Ct., 523, *supra*, page 49.

cate, issued to or in the name of any other person, or in a fictitious name, or the name of a deceased person, shall be punished by imprisonment at hard labor not less than one year nor more than five years, or by a fine of not less than three hundred nor more than one thousand dollars, or by both such fine and imprisonment.[1] [Ib.]

5. [§ 5427.] Every person who knowingly and intentionally aids or abets any person in the commission of any felony denounced in the three preceding sections, or attempts to do any act therein made felony, or counsels, advises, or procures, or attempts to procure, the commission thereof, shall be punished in the same manner and to the same extent as the principal party. [Ib.]

6. [§ 5428.] Every person who knowingly uses any certificate of naturalization heretofore granted by any court or hereafter granted, which has been or may be procured through fraud or by false evidence, or has been or may be issued by the clerk, or any other officer of the court, without any appearance and hearing of the applicant in court, and without lawful authority; and every person who falsely represents himself to be a citizen of the United States, without having been duly admitted to citizenship, for any fraudulent purpose whatever, shall be punishable by a fine of not more than one thousand dollars, or be imprisoned not more than two years, or both.[2] [Ib., § 3, p. 255.]

7. [§ 5429.] The provisions of the five preceding sections shall apply to all proceedings had or taken, or attempted to be had or taken, before any court in which any proceeding for naturalization may be commenced or attempted to be commenced.[3] [Ib., § 4.]

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[1] See chap. 6, *supra*.

See note to par. 2, this chap., *supra*.

B. registered as a voter, on the production of a certificate of his naturalization, which had been issued by a state court without his presence in court, and without any oath having been taken by him. The certificate was regular on its face. On an indictment against B., under section 5426 of the revised statutes, for using, for the purpose of registering as a voter, a naturalization certificate, knowing the same to have been unlawfully issued: *Held*, That the mere fact that B. knew that the certificate had been issued without his presence in court, and without any oath being taken by him, was not sufficient to warrant a conviction. U. S. *v.* Burley, 14 Blatch. 91.

See note par. (*l*) to chap. 6, "Naturalization," *supra*.

[2] See chap. 6, *supra*,

[3] See chap. 6, *supra*.

CHAPTER VIII.

PRESIDENTIAL ELECTIONS.[1]

[Chapter I, Title III, United States Revised Statutes.]

1. Time of appointing electors.
2. Number of electors.
3. Vacancies in electoral college.
4. Failure to make a choice on the appointed day.
5. Meeting of electoral college.
6. List of names of electors to be furnished to them.
7. Manner of voting.
8. Certificates to be made and signed.
9. Certificates to be sealed and indorsed.
10. Transmission of certificates.
11. When secretary of state shall send for district judge's list.
12. Counting the electoral votes in Congress.
13. Provisions for absence of president of senate.
14. Mileage of messengers.
15. Forfeiture for messenger's neglect of duty.
16. Vacancy in both offices.
17. Notification of vacancies to be published.
18. Requisites of notification.
19. Time of holding election to fill vacancy.
20. Regulations for quadrennial election made applicable to election to fill vacancies.
21. Resignation or refusal of office.

1. [§ 131.] Except in case of a presidential election prior to the ordinary period, as specified in sections one hundred and forty-seven to one hundred and forty-nine, inclusive, when the offices of president and vice-president both become vacant, the electors of president and vice-president shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a president and vice-president.[2] [1 Mar., 1792, chap. 8, § 1, v. 1, p. 239; 23 Jan., 1845, chap. 1, v. 5, p. 721.]

2. [§ 132.] The number of electors shall be equal to the number of senators and representatives to which the several States are

[1] Conspiring to prevent support of presidential elector, see par. 15, chap. 4.

See note to chapter 10, on Congressional elections, for act of June 30, 1876, declaring that there shall be no increase of the force at any navy yard within sixty days of a presidential or congressional election, except, etc.

See South Carolina Returning Board Habeas Corpus case, **Ex parte Hayne**, 4 Cent. Law Jour. 72, note to chap. 3, *supra*.

See pars. 11–18, 20. 21. chap. 1.

[2] See par. 13, chap. 1.

by law entitled at the time when the president and vice-president to be chosen come into office; except that, where no apportionment of representatives has been made after any enumeration, at the time of choosing electors, the number of electors shall be according to the then existing apportionment of senators and representatives. [1 Mar., 1792, chap. 8, § 1, v. 1, p. 239.]

3. [§ 133.] Each State may, by law, provide for the filling of any vacancy which may occur in its college of electors, when such college meets to give its electoral vote. [23 January, 1845, chap. 1, v. 5, p. 721.]

4. [§ 134.] Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day, in such manner as the legislature of such State may direct. [Ib.]

5. [§ 135.] The electors for each State shall meet and give their votes upon the first Wednesday in December, in the year in which they are appointed, at such place, in each State, as the legislature of such State shall direct. [1 March, 1792, chap. 8, § 2, v. 1, p. 239.]

6. [§ 136.] It shall be the duty of the executive of each State to cause three lists of the names of the electors of such State to be made and certified, and to be delivered to the electors on or before the day on which they are required, by the preceding section, to meet. [Ib., § 3, p. 240.]

7. [§ 137.] The electors shall vote for president and vice-president, respectively, in the manner directed by the Constitution.[1] [26 March, 1804, chap. 50, § 1, v. 2, p. 295.]

8. [§ 138.] The electors shall make and sign three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one of the votes for president, and the other of the votes for vice-president, and shall annex to each of the certificates one of the lists of electors which shall have been furnished to them by direction of the executive of the State. [1 March, 1792, chap. 8, §§ 2, 3, v. 1, p. 239; 26 March, 1804, chap. 50, § 1, v. 2, p. 295.]

9. [§ 139.] The electors shall seal up the certificates so made by them, and certify upon each that the lists of all the votes of such State given for president, and of all the votes given for vice-president, are contained therein. [Ib., § 2. Ib.]

[1] See par. 16, chap 1.

10. [§ 140.] The electors shall dispose of the certificates thus made by them in the following manner:

One. They shall, by writing under their hands, or under the hands of a majority of them, appoint a person to take charge of and deliver to the president of the Senate, at the seat of government, before the first Wednesday in January, then next ensuing, one of the certificates.

Two. They shall forthwith forward by the post-office to the president of the Senate, at the seat of government, one other of the certificates.

Three. They shall forthwith cause the other of the certificates to be delivered to the judge of that district in which the electors shall assemble. [Ib., 1b.]

11. [§ 141.] Whenever a certificate of votes from any State has not been received at the seat of government on the first Wednesday of January, indicated by the preceding section, the secretary of state shall send a special messenger to the district judge in whose custody one certificate of the votes from that State has been lodged, and such judge shall forthwith transmit that list to the seat of government. [1 Mar., 1792, chap. 8, § 4, v. 1, p. 240.]

12. [§ 142.] Congress shall be in session on the second Wednesday in February succeeding every meeting of the electors, and the certificates, or so many of them as have been received, shall then be opened, the votes counted, and the persons to fill the offices of president and vice-president ascertained and declared, agreeable to the Constitution.[1] [Ib., § 5.]

13. [§ 143.] In case there shall be no president of the Senate at the seat of government on the arrival of the persons intrusted with the certificates of the votes of the electors, then such persons shall deliver such certificates into the office of the secretary of state, to be safely kept and delivered over as soon as may be to the president of the Senate. [Ib., § 6.]

14. [§ 144.] Each of the persons appointed by the electors to deliver the certificates of votes to the president of the Senate shall be allowed, on the delivery of the list intrusted to him, twenty-five cents for every mile of the estimated distance, by the most usual road, from the place of meeting of the electors to the seat of government of the United States. [Ib., § 7.]

15. [§ 145.] Every person who, having been appointed, pursuant to subdivision one of section one hundred and forty or to section one hundred and forty-one, to deliver the certificates of the

[1] See par. 16, chap. 1.

votes of the electors to the president of the Senate, and having accepted such appointment, shall neglect to perform the services required from him, shall forfeit the sum of one thousand dollars. [Ib., § 8.]

16. [§ 146.] In case of removal, death, resignation, or inability of both the president and vice-president of the United States, the president of the Senate, or, if there is none, then the speaker of the House of Representatives, for the time being, shall act as president until the disability is removed or a president elected.[1] [Ib., § 9.]

17. [§ 147.] Whenever the offices of president and vice-president both become vacant, the secretary of state shall, forthwith, cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State.[2] [Ib., § 10.]

18. [§ 148.] The notification shall specify that electors of a president and vice-president of the United States shall be appointed or chosen in the several States, as follows:

First. If there shall be the space of two months yet to ensue between the date of such notification and the first Wednesday in December, then next ensuing, such notification shall specify that the electors shall be appointed or chosen within thirty-four days preceding such first Wednesday in December.

Second. If there shall not be the space of two months between the date of such notification and such first Wednesday in December, and if the term for which the president and vice-president last in office were elected, will not expire on the third day of March, next ensuing, the notification shall specify that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December, in the year next ensuing. But if there shall not be the space of two months between the date of such notification and the first Wednesday in December then next ensuing, and if the term for which the president and vice-president last in office were elected will expire on the third day of March, next ensuing, the notification shall not specify that electors are to be appointed or chosen. [Ib., § 10.]

19. [§ 149.] Electors appointed or chosen upon the notification prescribed by the preceding section shall meet and give their votes upon the first Wednesday of December specified in the notification. [Ib.]

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[1] See par. 15, chap. 1. [2] Ib.

20. [§ 150.] The provisions of this title, relating to the quadrennial election of president and vice-president, shall apply with respect to any election to fill vacancies in the offices of president and vice-president, held upon a notification given when both offices become vacant. [Ib.]

21. [§ 151.] The only evidence of a refusal to accept, or of a resignation of the office of president or vice-president, shall be an instrument in writing, declaring the same, and subscribed by the person refusing to accept or resigning, as the case may be, and delivered into the office of the secretary of state. [Ib., § 11.]

CHAPTER IX.

ELECTION OF SENATORS.[1]

[From Chapter I, Title II, United States Revised Statutes.]

1. When senators elected.
2. Mode of election.
3. Vacancy occurring before meeting of legislature.
4. Vacancy during session of legislature.
5. Election of senators certified.
6. Countersigning of certificate.

1. [§ 14.] The legislature of each State which is chosen next preceding the expiration of the time for which any senator was elected to represent such State in Congresss shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a senator in Congress.[2] [25 July, 1866, chap. 245, § 1, v. 14, p. 243.]

2. [§ 15.] Such election shall be conducted in the following manner: Each house shall openly, by a *viva voce* vote of each member present, name one person for senator in Congress from such State, and the name of the person so voted for, who receives a majority of the whole number of votes cast in each House, shall be entered on the journal of that House, by the clerk or secretary thereof; or if either House fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock meridian of the day following that on which proceedings are required to take place as aforesaid, the members of the two Houses shall convene in joint assembly, and the journal of each House shall then be read, and if the same person has received a majority of all the votes in each house, he shall be declared duly elected senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by *viva voce* vote of each member present, a person for senator, and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both Houses being present and voting, shall be declared duly

[1] See, for constitutional provisions, pars. 5–10, 21, chap. 1.

[2] See par 8, chap. 1.

elected. If no person receives such majority on the first day, the joint assembly shall meet at twelve o'clock meridian of each succeeding day during the session of the legislature, and shall take at least one vote, until a senator is elected.[1] [Ib.]

3. [§ 16.] Whenever, on the meeting of the legislature of any State, a vacancy exists in the representation of such State in the senate, the legislature shall proceed, on the second Tuesday after meeting and organization, to elect a person to fill such vacancy, in the manner prescribed in the preceding section for the election of a senator for a full term.[1] [Ib.]

4. [§ 17.] Whenever, during the session of the legislature of any State, a vacancy occurs in the representation of such State in the senate, similar proceedings to fill such vacancy shall be had on the second Tuesday after the legislature has organized and has notice of such vacancy.[1] [Ib.]

5. [§ 18.] It shall be the duty of the executive of the State from which any senator has been chosen, to certify his election, under the seal of the State, to the president of the Senate of the United States.[1] [Ib. § 3, p. 244.]

6. [§ 19.] The certificate mentioned in the preceding section shall be countersigned by the secretary of state of the State.[1] [Ib.]

[1] See par. 8, chap. 1.

CHAPTER X.

APPORTIONMENT AND ELECTION OF REPRESENTATIVES AND DELEGATES.[1]

[From Chapter II, Title II, and Title XXII, United States Revised Statutes.]

IN THE STATES.

1. Number and apportionment of representatives.
2. Representatives assigned to new States.
3. Reduction of representatives under the fourteenth amendment.
4. Elections by districts.
5, 6. Times of election.
7. Vacancies.
8. Votes by ballot.

IN THE TERRITORIES.

9. Delegate to Congress.
10. Time, place, and manner of electing delegate.

IN THE STATES.

1. [§ 20.] After the 3d day of March, 1873, the House of Representatives shall be composed of 292 members, to be apportioned among the several States as follows:[2]

Alabama, 8; Arkansas, 4; California, 4; Connecticut, 4; Delaware, 1; Florida, 2; Georgia, 9; Illinois, 19; Indiana, 13; Iowa, 9; Kansas, 3; Kentucky, 10; Louisiana, 6; Maine, 5; Maryland, 6; Massachusetts, 11; Michigan, 9; Minnesota, 3; Mississippi, 6; Missouri, 13; Nebraska, 1; Nevada, 1; New Hampshire, 3; New Jersey, 7; New York, 33; North Carolina, 8; Ohio, 20; Oregon, 1; Pennsylvania, 27; Rhode Island, 2; South Carolina, 5; Tennessee, 10; Texas, 6; Vermont 3; Virginia, 9; West Virginia, 3; Wisconsin, 8.

[1] Conspiring to prevent support of candidate for representative or delegate, see par. 15, chap. 4, *infra*.

See South Carolina Returning Board Habeas Corpus case, Ex parte Hayne, 4 Cent. Law Jour. 72, note to "Jurisdiction."

By the act of June 30, 1876, chap. 159, v. 19, p. 65, it is declared:

"And no increase of the force at any navy yard shall be made at any time within sixty days next before any election to take place for President of the United States or member of Congress, except when the secretary of the navy shall certify that the needs of the public service make such increase necessary at the time, which certificate shall be immediately published when made."

For constitutional provisions, see pars. 1–4, 8–10, 20, 21, chap. 1.

[2] See pars. 3, 20, chap. 1.

2. [§ 21.] Whenever a new State is admitted to the Union, the representatives assigned to it shall be in addition to the number two hundred and ninety-two.

3. [§ 22.] Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, article fourteen, section two,[1] except for participation in the rebellion or other crime, the number of representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State. [2 February, 1872, chap. 11, § 6, v. 17, p. 29.]

4. [§ 23.] In each State entitled under this apportionment, to more than one representative, the number to which such State may be entitled in the forty-third, and each subsequent, Congress shall be elected by districts composed of contiguous territory, and containing, as nearly as practicable, an equal number of inhabitants, and equal in number to the number of representatives to which such State may be entitled in Congress, no one district electing more than one representative; but, in the election of representatives to the Forty-Third Congress in any State to which an increased number of representatives is given by this apportionment, the additional representative or representatives may be elected by the State at large, and the other representatives by the districts as now prescribed by law, unless the legislature of the State shall otherwise provide, before the time fixed by law for the election of representatives therein.[2] [Ib., § 2, p. 28; 30 May, 1872, chap. 239, v. 17, p. 192.]

[§ 24. Local—applies only to California, and to the year 1874.]

5. [§ 25.] The Tuesday next after the first Monday in November, in the year eighteen hundred and seventy-six, is established as the day, in each of the States and Territories of the United States, for the election of representatives and delegates to the Forty-fifth Congress; and the Tuesday next after the first Monday in November, in every second year thereafter is established as the day for the election, in each of said States and Territories, of representatives and delegates to the Congress commencing on the fourth day of March next thereafter.[3] [2 February, 1872, chap. 11, § 3, v. 17, p. 28.]

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[1] See par. 20, chap. 1.

[2] See par. 8, chap. 1.

[3] See pars. 6, 7, next page; also par. 8, chap. 1.

6. The last section was modified by act of March 3, 1875, chap. 130, v. 18, p. 400, as follows:

§ 6. That section twenty-five of the revised statutes, prescribing the time for holding elections for representatives to Congress, is hereby modified so as not to apply to any State that has not yet changed its day of election, and whose Constitution must be amended in order to effect a change in the day of the election of State officers in said State.

7. [§ 26.] The time for holding elections in any State, District, or Territory, for a representative or delegate to fill a vacancy, whether such vacancy is caused by a failure to elect at the time prescribed by law, or by the death, resignation, or incapacity of a person elected, may be prescribed by the laws of the several States and Territories respectively.[1] [2 February, 1872, chap. 11, § 4, v. 17, p. 29.]

8. [§ 27.] All votes for representatives in Congress must be by written or printed ballot; and all votes received or recorded contrary to this section shall be of no effect. But this section shall not apply to any State voting otherwise, whose election for representatives occurs previous to the regular meeting of its legislature, next after the twenty-eighth day of February, eighteen hundred and seventy-one.[2] [28 February, 1871, chap. 99, § 19, v. 16, p. 440; 30 May, 1872, chap. 239, v. 17, p. 192.]

IN THE TERRITORIES.

9. [§ 1862.] Every Territory shall have the right to send a delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

10. [§ 1863.] The first election of a delegate in any Territory for which a temporary government is hereafter provided by Congress shall be held at the time and places and in the manner the governor of such Territory may direct, after at least sixty days' notice, to be given by proclamation; but at all subsequent elections therein, as well as at all elections for a delegate in organized Territories, such time, places, and manner of holding the election shall be prescribed by the law of each Territory.

[1] See pars. 4, 8, chap. 1.

[2] See par. 8, chap. 1.

CHAPTER XI.

CONTESTED ELECTIONS.

[Chapter VIII., Title II., U. S. Rev. Stat.].

1. Notice of intention to contest.
2. Time for answer.
3, 4. Time for taking testimony.
5. Notice of deposition; service.
6. Testimony taken at several places at same time.
7. Who may issue subpenas.
8. What the subpena shall contain.
9. When justices of the peace may act.
10. Depositions by consent.
11. Service of subpena.
12. Witnesses need not attend out of the county.
13. Penalty for failing to attend or testify.
14. Witnesses outside of district.
15. Party notified may select an officer.
16. Depositions taken by party or agent.
17. Examination of witnesses.
18. Testimony, to what confined.
19. Testimony, how written out and attested.
20. Production of papers.
21. Adjournments.
22. Notice, etc., attached to depositions.
23. Copy of notice and answer to accompany testimony.
24. How testimony to be sent to clerk of House; how opened.
25. Fees of witnesses.
26. Fees of officers.
27, 28. Expenses of contest.

1. [§ 105.] Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest, of his intention to contest the same, and, in such notice, shall specify particularly the grounds upon which he relies in the contest. [19 Feb., 1851, chap. 11, § 1, v. 9, p. 568.]

2. [§ 106.] Any member upon whom the notice mentioned in the preceding section may be served shall, within thirty days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election; and serve a copy of his answer upon the contestant. [Ib., § 2.]

3. [§ 107.] In all contested election cases the time allowed for

taking testimony shall be ninety days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first forty days, the returned member during the succeeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. [10 Jan., 1873, chap. 24, § 1, v. 17, p. 408.]

4. The last section is construed by act of 2d March, 1875, chap. 119, v. 18, p. 338, as follows:

§ 2. That section one hundred and seven of the revised statutes of the United States shall be construed as requiring all testimony in cases of contested election to be taken within ninety days from the day on which the answer of the returned member is served upon the contestant.

5. [§ 108.] The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the name of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest, if, by the use of reasonable diligence, such personal service can be made; but if, by the use of such diligence, personal service can not be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service. Testimony in rebuttal may be taken on five days' notice. [Ib., §§ 1, 3; 19 Feb., 1851, chap. 11, § 6, v. 9, p. 569.]

6. [§ 109.] Testimony in contested election cases may be taken at two or more places at the same time.

7. [§ 110.] When any contestant or returned member is desirous of obtaining any testimony respecting a contested election, he may apply for a subpena to either of the following officers who may reside within the congressional district in which the election to be contested was held:

First. Any judge of any court of the United States.

Second. Any chancellor, judge, or justice of a court of record of any State.

Third. Any mayor, recorder, or intendent of any town or city.

Fourth. Any register in bankruptcy or notary public. [19 Feb-

ruary, 1851, chap. 11, § 3, v. 9, p. 568; 23 January, 1860, chap. 15, v. 15, p. 267.]

8. [§ 111.] The officer to whom the application authorized by the preceding section is made shall, thereupon, issue his writ of subpena, directed to all such witnesses as shall be named to him, requiring their attendance before him, at some time and place named in the subpena, in order to be examined respecting the contested election. [19 February, 1851, chap. 11, § 3, v. 9, p. 568.]

9. [§ 112.] In case none of the officers mentioned in section one hundred and ten are residing in the congressional district from which the election is proposed to be contested, the application thereby authorized may be made to any two justices of the peace residing within the district; and they may receive such application and jointly proceed upon it. [Ib., § 10, p. 570.]

10. [§ 113.] It shall be competent for the parties, their agents and attorneys authorized to act in the premises, by consent in writing, to take depositions without notice; also, by such written consent, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in common law, or civil actions, or in chancery, by either the laws of the United States or of the State in which the same may be taken, and to waive proof of the official character of such officer or officers. Any written consent given as aforesaid shall be returned with the depositions. [10 Jan., 1873, chap. 24, § 3, v. 17, p. 408.]

11. [§ 114.] Each witness shall be duly served with a subpena, by a copy thereof delivered to him or left at his usual place of abode, at least five days before the day on which the attendance of the witness is required. [19 Feb., 1851, chap. 11, § 4, v. 9, p. 569.]

12. [§ 115.] No witness shall be required to attend an examination out of the county in which he may reside or be served with a subpena. [Ib., § 4.]

13. [§ 116.] Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpena was issued, and for his use, by an action of debt, to any court of the United States; and shall also be liable to an indictment for a misdemeanor, and punishment by fine and imprisonment. [Ib., § 5.]

14. [§ 117.] Depositions of witnesses residing outside of the district, and beyond the reach of a subpena, may be taken before

any officer authorized by law to take testimony in contested election cases, in the district in which the witness to be examined may reside. [10 January, 1873, chap. 24, § 2, v. 17, p. 408.]

15. [§ 118.] The party notified as aforesaid, his agent or attorney, may, if he see fit, select an officer (having authority to take depositions in such cases), to officiate, with the officer named in the notice, in the taking of the depositions; and, if both such officers attend, the depositions shall be taken before them both, sitting together, and be certified by them both. But, if only one of such officers attend, the depositions may be taken before and certified by him alone. [Ib., § 3.]

16. [§ 119.] At the taking of any deposition, under this chapter, either party may appear and act in person, or by agent or attorney. [Ib.]

17. [§ 120.] All witnesses who attend in obedience to a subpena, or who attend voluntarily, at the time and place appointed, of whose examination notice has been given, as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpena, or, in case of his absence, by any other officer who is authorized to issue such subpena, or by the officer before whom the depositions are to be taken by written consent, or before whom the depositions of witnesses residing outside of the district are to be taken, as the case may be, touching all such matters, respecting the election about to be contested, as shall be proposed by either of the parties or their agents. [19 February, 1851, chap. 11, § 7, v. 9, p. 569.]

18. [§ 121.] The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections one hundred and five and one hundred and six. [Ib., § 9.]

19. [§ 122.] The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence, and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively. [Ib., § 7.]

20. [§ 123.] The officer shall have power to require the production of papers, and, on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession, pertaining to the election, or to produce and deliver up certified or sworn copies of the same, in case they may be official papers, such person shall be liable to all the penalties prescribed in section one hundred and sixteen. All papers thus produced, and all certified or

sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the clerk of the House of Representatives. [Ib., § 8.]

21. [§ 124.] The taking of the testimony may, if so stated in the notice, be adjourned from day to day. [10 January, 1873, chap. 24, § 3, v. 17, p. 408.]

22 [§ 125.] The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpena, where any has been served, shall be attached to the depositions when completed. [19 February, 1851, chap. 11, § 7, v. 9, p. 569; 10 January, 1873, chap. 24, § 3, v. 17, p. 408.]

23. [§ 126.] A copy of the notice of contest, and of the answer of the returned member, shall be prefixed to the depositions taken, and transmitted with them, to the clerk of the House of Representatives. [19 February, 1851, chap. 11, § 9, v. 19, p. 569.]

24. [§ 127.] All officers taking testimony to be used in a contested election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify and carefully seal and immediately forward the same, by mail, addressed to the clerk of the House of Representatives of the United States, Washington, D. C.; and shall also indorse upon the envelope containing such deposition or testimony, the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and shall subscribe such indorsement. Upon the written request of either party, the clerk of the House of Representatives shall open any deposition at any time after he shall have received the same, and he may furnish either party with a copy thereof. [10 January, 1873, chap. 24, § 4, v. 17, p. 409.]

[So much of this section as requires the clerk of the House of Representatives to open any deposition, and authorizes him to furnish a copy to either party, was repealed by statute of 2 March, 1875, chap. 119, v. 18, p. 338.]

25. [§ 128.) Every witness attending by virtue of any subpena herein directed to be issued, shall be entitled to receive the sum of seventy-five cents for each day's attendance, and the further sum of five cents for every mile necessarily traveled in going and returning. Such allowance shall be ascertained and certified by the officer taking the examination, and shall be paid by the party at whose instance such witness was summoned.[1] [19 February, 1851, chap. 11, § 11, v. 9, p. 570.]

[1] See amendment to § 130, *infra*, par. 28, next page.

26. [§ 129.] Each judge, justice, chancellor, chief executive officer of a town or city, register in bankruptcy, notary public, and justice of the peace, who shall be necessarily employed, pursuant to the provisions of this chapter, and all sheriffs, constables, or other officers who may be employed to serve any subpena or notice herein authorized, shall be entitled to receive from the party at whose instance the service shall have been performed, such fees as are allowed for similar services in the State wherein such service may be rendered. [Ib.]

27. [§ 130.] No payment shall be made by the House of Representatives, out of its contingent fund or otherwise, to either party to a contested election case, for expenses incurred in prosecuting or defending the same. [3 March, 1873, chap. 226, § 1, v. 17, p. 485 (490).]

28. That hereafter no contestee or contestant for a seat in the House of Representatives shall be paid exceeding two thousand dollars for expenses in election contests; and before any sum whatever shall be paid to a contestant or contestee for expenses of election contests, he shall file with the clerk of the committee on elections a full and detailed account of his expenses, accompanied by the vouchers and receipts for each item, which account and vouchers shall be sworn to by the party presenting the same, and no charges for witness fees shall be allowed in said accounts, unless made in strict conformity to section one hundred and twenty-eight Revised Statutes of the United States. [Act of Mar. 3, 1879, chap. 182, v. 20, p. 400.]

APPENDIX.

DECISIONS OF THE SUPREME COURT OF THE UNITED STATES, DECIDING THE U. S. SUPERVISOR'S LAW TO BE CONSTITUTIONAL.

(October Term of 1879. Decision rendered March 8, 1880.)
[*8 Washington Law Reporter, 162.*]

EX PARTE ALBERT SIEBOLD, WALTER TUCKER, MARTIN C. BURNS, LEWIS COLEMAN, AND HENRY BOWERS.

Petition for Habeas Corpus to John M. McClintock, the Marshal of the United States for the District of Maryland, and to James H. Irwin, Warden of the Jail of the City of Baltimore, and for Certiorari to the Circuit Court of the United States for said District.

The following extracts from the opinion of the Court are given here to show briefly the facts in the case:

. . . . . .

"The petitioners in this case were judges of election at different voting precincts in the city of Baltimore, at the election held in that city, and in the State of Maryland, on the fifth day of November, 1878, at which representatives to the Forty-sixth Congress were voted for.

"At the November term of the Circuit Court of the United States for the District of Maryland, an indictment against each of the petitioners was found in said court, for offenses alleged to have been committed by them respectively at their respective precincts whilst being such judges of election; upon which indictments they were severally tried, convicted, and sentenced by said court to fine and imprisonment. They now apply to this court for a writ of habeas corpus to be relieved from imprisonment.

"The indictments commence with an introductory statement, that on the fifth day of November, 1878, at the fourth [or other] congressional district of the State of Maryland, a lawful election was held, whereat a representative for that congressional district in the Forth-sixth Congress of the United States was voted for; that a certain person [naming him] was then and there a supervisor of election of the United States, duly appointed by the circuit court aforesaid, pursuant to the 2012th section of the Revised Statutes, for the third [or other] voting precinct of the fifteenth [or other] ward of the city of Baltimore in the said congres-

sional district for and in respect of the election aforesaid, thereat: that a certain person [naming him] was then and there a special deputy marshal of the United States, duly appointed marshal for the Maryland district, pursuant to section 2021 of the Revised Statutes, and assigned for such duty as is provided by that and the following section, to the said precinct of said ward of said city, at the congressional election aforesaid, thereat. Then come the various counts.

"The petitioner, Bowers, was convicted on the second count of the indictment against him, which is as follows:

"'That the said Henry Bowers, afterward, to wit, on the day and year aforesaid, at the said voting precinct within the district aforesaid, unlawfully did obstruct, hinder, and by the use of his power and authority as such judge as aforesaid (which judge he then and there was), interfere with and prevent the *said supervisor of election*, in the performance of a certain duty in respect to said election required of him, and which he was then and there authorized to perform by the laws of the United States, in such case made and provided, to wit, that of personally inspecting and scrutinizing, at the beginning of said day of election, and of the said election, the manner in which the voting was done at the said poll of election, by examining and seeing whether the ballot first voted at said poll of election was put and placed in a ballot-box containing no ballots whatever, contrary to the 5522nd section of said statutes, and against the peace, government, and dignity of the United States.'

"Tucker, who was indicted jointly with one Gude, was convicted upon the second and fifth counts of the indictment against them, which were as follows:

"'(2nd.) That the said Justus J. Gude and the said Walter Tucker, afterward, to wit, on the day and year aforesaid, at the said voting precinct of said ward of said city, unlawfully and by exercise of their power and authority as such judges as aforesaid, did prevent and hinder the free attendance and presence of the said James N. Schofield (who *who was then and there such deputy marshal* as aforesaid, in the due execution of his said office), at the poll of said election of and for said voting precinct, and the full and free access of the same deputy marshal to the same poll of election, contrary to the said last-mentioned section of said statutes (sec. 5522), and against the peace, government, and dignity of the United States.

"'(5th.) That the said Justus J. Gude and the said Walter Tucker, on the day and year aforesaid, at the precinct aforesaid, within the district aforesaid (they being then and there such officers of said election as aforesaid), knowingly and unlawfully at the said election did a certain act, not then and there authorized by any law of the State of Maryland, and not authorized then and there by any law of the United States, by then and there fraudulently and clandestinely putting and placing in the ballot-box of the said precinct twenty (and more) ballots (within the intent and meaning of section 5514 of said statutes) which had not been voted at said election in said precinct before the ballots, then and there lawfully

deposited in the same ballot-box, had been counted, with intent thereby to affect said election and the result thereof, contrary to section 5515 of said statutes, and against the peace, government, and dignity of the United States.'

"This charge, it will be observed, is for the offense commonly known as 'stuffing the ballot-box.'

"The counts on which the petitioners, Burns and Coleman, were convicted were similar to those above specified. Burns was charged with refusing to allow the supervisor of elections to inspect the ballot-box, or even to enter the room where the polls were held, and with violently resisting the deputy marshal who attempted to arrest him, as required by section 2022 of the Revised Statutes. The charges against Coleman were similar to those against Burns, with the addition of a charge for stuffing the ballot-box. Siebold was only convicted on one count of the indictment against him, which was likewise a charge of stuffing the ballet-box.

"The sections of the law on which these indictments are founded, and the validity of which is sought to be impeached for unconstitutionality, are" [sections 2011, 2012, 2016, 2017, 2021, 2022 (see pp 13–19, this book), and in part, sections 5514 and 5522 (see pp. 35–39).]

The points decided are as follows:

"1. The appellate jurisdiction of this court, exercisable by habeas corpus, extends to a case of imprisonment upon conviction and sentence in an inferior court of the United States, under and by virtue of an unconstitutional act of Congress, whether this court has jurisdiction to review the judgment by writ of error or not.

"2. The jurisdiction of this court by habeas corpus, when not restrained by some special law, extends generally to imprisonment by inferior tribunals of the United States which have no jurisdiction of the cause, or whose proceedings are otherwise void and not merely erroneous; and such a case occurs when the proceedings are had under an unconstitutional act.

"3. But when the court below has jurisdiction of the cause, and the matter charged is indictable under a constitutional law, any errors committed by the inferior court can only be reviewed by writ of error.

"4. Where personal liberty is concerned the judgment of an inferior court affecting it is not so conclusive but that the question of its authority to try and imprison the party may be reviewed on habeas corpus by a superior court or judge having power to award the writ.

"5. Certain judges of election in the city of Baltimore, appointed under State laws, were convicted in the Circuit Court of the United States, under sections 5515 and 5522 of the Revised Statutes of the United States, for interfering with and resisting the supervisors of election and deputy marshals of the United States in the performance of their duty at an election of representatives to Congress, under sections 2016, 2017, 2021, 2022, title XXVI, of the Revised Statutes: *Held*, that the question of the constitutionality of said laws is good ground for this court to issue a writ

of habeas corpus to inquire into the legality of the imprisonment under such conviction; and if the laws are determined to be unconstitutional, the prisoners should be discharged.

"6. Congress had power by the constitution to pass the sections referred to, viz., section 5515 of the Revised Statutes, which makes it a penal offense against the United States for any officer of election, at an election held for a representative in Congress, to neglect to perform, or to violate, any duty in regard to such an election, whether required by a law of the State or of the United States, or knowingly to do any act unauthorized by any such law, with intent to affect such election, or to make a fraudulent certificate of the result, etc.; and section 5522, which makes it a penal offense for any officer or other person with or without process, to obstruct, hinder, bribe, or interfere with a supervisor of election, or marshal, or deputy marshal, in the performance of any duty required of them by any law of the United States, or to prevent their free attendance at the places of registration or election, etc.; also, sections 2011, 2012, 2016, 2016, 2021, 2022, title XXVI, of the Revised Statutes, which authorizes the circuit courts to appoint supervisors of such elections, and the marshal to appoint special deputies to aid and assist them, and which prescribe the duties of such supervisors and deputy marshals; these being the laws provided by Congress in the Enforcement Act of May 31, 1870, and the supplement thereto of February 28, 1871, for supervising the elections of representatives, and for preventing frauds therein.

"7. The circuit courts have jurisdiction of indictments under these laws, and a conviction and sentence in pursuance thereof is lawful cause of imprisonment, from which this court has no power to relieve on habeas corpus.

"8. In making regulations for the election of representatives, it is not necessary that Congress should assume entire and exclusive control thereof. By virtue of that clause of the constitution which declares that 'the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing senators.' Congress has a supervisory power over the subject, and may either make entirely new regulations, or add to, alter, or modify the regulations made by the State.

"9. In the exercise of such supervisory power, Congress may impose new duties on the officers of election, or additional penalties for breach of duty, or for the perpetration of fraud; or provide for the attendance of officers to prevent frauds, and see that the elections are legally and fairly conducted.

"10. The exercise of such power can properly cause no collision of regulations or jurisdiction, because the authority of Congress over the subject is paramount, and any regulations it may make necessarily supersede inconsistent regulations of the State. This is involved in the power to 'make or alter.'

"11. There is nothing in the relation of the State and national sov-

ereignties to preclude the co-operation of both in the matter of elections of representatives. If both were equal in authority over the subject, collisions of jurisdiction might ensue; but the authority of the national government being paramount, collisions can only occur from unfounded jealousy of such authority.

"12. Congress had power by the constitution to vest in the circuit court the appointment of supervisors of election. It is expressly declared that 'Congress may by law vest the appointment of such inferior officers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.' While, as a question of propriety, the appointment of officers whose duties appertain to one department ought not to be lodged in another, the matter is nevertheless left to the discretion of Congress.

"13. The provision which authorizes the deputy marshals to keep the peace at the elections is not unconstitutional. The national government has the right to use physical force in any part of the United States to compel obedience to its laws and to carry into execution the powers conferred upon it by the constitution.

"14. The concurrent jurisdiction of the national government with that of the States, which it has in the exercise of its powers of sovereignty in every part of the United States, is distinct from that exclusive jurisdiction which it has by the Constitution of the District of Columbia, and in those places acquired for the erection of forts, magazines, arsenals, etc.

"15. The provisions adopted for compelling the State officers of election to observe the State laws regulating elections of representatives, not altered by Congress, are within the supervisory powers of Congress over such elections. The duties to be performed in this behalf are owed to the United States as well as to the State; and their violation is an offense against the United States which Congress may rightfully inhibit and punish. This necessarily follows from the direct interest which the national government has in the due election of its representatives and from the power which the constitution gives to Congress over this particular subject."

(October Term of 1879. Decision rendered March 8, 1880.)

EX PARTE: IN THE MATTER OF AUGUSTUS F. CLARKE, PETITIONER.

Petition for writ of Habeas Corpus.

The following extract gives the facts in the case:

"This case comes before us on the return to a writ of habeas corpus issued by order of one of the justices of this court. The petition for a habeas corpus was addressed to the judges of the Supreme Court of the

United States by Augustus F. Clarke, who states therein that he is a member of the city council of Cincinnati, and, as such, one of the judges of election of precinct A in said city; in which capacity he acted at the state, congressional, county, and municipal elections held in said city in October, 1878. That on the twenty-fourth of October, 1878, he was indicted in the Circuit Court of the United States for the Southern District of Ohio for unlawfully neglecting to perform the duty required of him as such judge of election by the laws of the State of Ohio in regard to said election, in this: that having accepted one of the poll-books of said election, sealed and directed according to law, for the purpose of conveying the same to the clerk of the Court of Common Pleas of Hamilton county, in said state, at his office, he neglected to do so; and, in another count, that he permitted the said poll-books, sealed and directed for the purpose aforesaid, to be broken open before he conveyed the same to said clerk; that a motion to quash said indictment, and a demurrer thereto, having been successively overruled, he pleaded not guilty, and at the February term, 1879, was tried and found guilty, and having unsuccessfully moved for a new trial, and in arrest of judgment, he was sentenced by said court to be imprisoned in the jail of Hamilton county for twelve months, and to pay a fine of two hundred dollars and the cost of prosecution; that in pursuance of said sentence he had been arrested and imprisoned, and is now imprisoned and restrained from his liberty by the marshal of the United States for said district. The petition then asserts that the said circuit court had no jurisdiction in the premises, and that its acts were wholly void and his imprisonment unlawful. He, therefore, prays a habeas corpus to the said marshal, and a certiorari to the clerk of said court, if necessary, and that he may be discharged from custody. A certified copy of the indictment, proceedings, and judgment in the circuit court is annexed to the petition, from which it appears that the first count charged that the petitioner, on the ninth of October, 1878, in the county of Hamilton, in the State of Ohio, being an officer of election at which a Representative of Congress was voted for, to wit: a judge of said election at precinct A of the eighth ward of Cincinnati, and being duly appointed such judge of election under the laws of Ohio, did unlawfully neglect to perform a duty required of him by the laws of said state in regard to said election, specifying said neglect, to wit, that he neglected to convey the poll-book to the county clerk, which had been sealed up by the judges and delivered to him for that purpose; contrary to the form of the statute and against the peace and dignity of the United States. The second count charged that the petitioner, as such judge of election, violated a duty required of him by the laws of said state in regard to said election, specifying the violation, namely, that having received the poll-book in the manner and for the purpose aforesaid, he permitted it to be broken open before he conveyed it to the county clerk, contrary to the form of the statute, etc."

"The law of Ohio which the petitioner is charged with violating is as follows:

"'(32.) Sec. XIX.[1] That, after canvassing the votes in the manner aforesaid, the judges, before they disperse, shall put under cover one of the poll-books, seal the same, and direct it to the clerk of the court of common pleas of the county wherein the return is to be made; and the poll-book, thus sealed and directed, shall be conveyed by one of the judges (to be determined by lot if they can not agree otherwise) to the clerk of the court of common pleas of the county, at his office, within two days from the day of the election; and the other poll-book, where the same is not otherwise disposed of by this act, shall be deposited with the township clerk, or clerk of the election district (as the case may be), within three days from the day of the election, there to remain for the use of the persons who may choose to inspect the same.'"

The points decided are as follows:

"1. An officer of election at an election for a Representative to Congress in the city of Cincinnati, was convicted of a misdemeanor in the circuit court of the United States, under section 5515 of the Revised Statutes, for a violation of the law of Ohio in not conveying the ballot-box, after it had been sealed up and delivered to him for that purpose, to the county clerk, and for allowing it to be broken open: *Held*, according to the decision in Ex parte Siebold and others, that Congress had power to pass the law under which conviction was had, and that the circuit court had jurisdiction of the offense.

"2. In such a case, a habeas corpus for discharge from imprisonment under the conviction was rightfully issued by a justice of this court, returnable before himself; and said justice had the right, if it could be done without injury to the prisoner, to refer the matter to this court for its determination, it being a case which involved the exercise of appellate jurisdiction.

"3. Had the case been one involving original jurisdiction only, this court could not have taken jurisdiction of it."

Justices FIELD and CLIFFORD dissented in both cases.

(1) Now section 2961, Revised Statutes of Ohio. See page 119, "Laws of Elections in Ohio."

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